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Volume 1 Number 6

# Cabinet Form of Government

DORMIN J. ETTRUDE, Compiler

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Briefs, Bibliographies, Debates, Reprints of Selected Articles and Study Outlines on Timely Topics

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## Cabinet Form of Government

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## INTRODUCTION

The relation of the executive and legislative, and, more remotely, the judicial, functions of government to one another has always been one of the problems of democratic government, a problem that increases in importance with the increasing age and complexity of governmental institutions. To understand the questions involved it is necessary to distinguish between the two main forms of democratic and representative government. One, the parliamentary system, had its origin in England and is in force in England, Canada, South Africa, Australia, France and certain other European countries. The presidential system is found in the United States, and other American countries.

In the parliamentary system, to take its best and most historic example, that of England, the executive and legislative functions are combined and the courts exercise their powers under this combined executive-legislative unit. The Cabinet is the supreme ruling power. Cabinet members have seats in Parliament and it is the duty of each member (1) to direct one of the great departments of government, as an executive and administrative officer, (2) to participate in legislation by

preparing bills and supporting them before the Cabinet and in Parliament and (3) to help formulate national policies and uphold the government. The prime minister is the real executive—he and the Cabinet lead the majority party and for the time being, manage the government in accordance with the principles of the majority party. When the Cabinet is opposed the members resign or go back to the country for a general election. The party sustained by the election then takes the lead.

The presidential system of government, as developed in the United States, was based on Montesquieu's theory of the separation of powers, wherein the executive, legislative and judicial powers reside in separate bodies—the president and his Cabinet, Congress, and the courts. Each is independent of the other and each acts as a check on the other. The Cabinet is an extra-constitutional development. The members of the Cabinet are appointed by the president with the consent of the Senate. Congress determines and defines the powers of the Cabinet and regulates in detail the organization and procedure of the various departments but the Cabinet officers are directly responsible to the president and he must assume responsibility for their acts. On the other hand, he is not obliged to seek their opinions or advice, and is free to accept or reject it when sought. There is no limitation on his power to remove members of the Cabinet.

Cabinet members in the United States have the right to participate indirectly in legislative action but are not members of the legislative body. It has been contended that members of the United States Cabinet should be given seats in Congress and have the power to initiate and guide legislation as do the members of the English Cabinet. It is with this question that the following pages are concerned.

December 23, 1922.

# BRIEF

RESOLVED: *That the cabinet form of government should be adopted in the United States.*

INTRODUCTION

I. Definitions.
   A. Cabinet system: That form of national government which has been developed in Great Britain, in which the executive and legislative powers are combined.
   B. Presidential system: That form of government which has been developed in the United States, in which the executive and legislative powers are separate and distinct.

II. Issues of the debate.
   A. Is the cabinet form superior in theory to that of the presidential form?
   B. Will the cabinet form, if applied to the United States, be more successful than the present form?

III. Differences between the two plans, in regard to
   A. The executive.
      1. Cabinet: Executive selected by, and responsible to the legislature.
      2. Presidential: Executive elected by, and responsible to the people.
   B. Legislature.
      1. Cabinet: The dominating portion of government, with other bodies subordinate.
      2. Presidential: One of three equal powers of government.
   C. Judiciary.
      1. Cabinet: In practice, subordinate to the legislature.
      2. Presidential: Independent, with power to check actions of executive and legislature.

IV. Development of the two systems.
   A. Cabinet form, a growth in Great Britain from a monarchy to a democracy, with representative form of government.
   B. Presidential form, an adoption by constitutional convention in the United States of new practices in governmental organization.
      1. Previous governments had been more of the cabinet type.
      2. The principle of separation of powers advocated by Montesquieu had never been put into successful practice.
      3. Even delegates to the convention had advocated the cabinet form.
   C. The cabinet form has spread to Europe, while the presidential form has been adopted in the Americas.
   D. Following the World War, governments have shown a tendency to adopt the presidential form.

AFFIRMATIVE

I. A change in our form of government is necessary to remedy certain evils.
   A. There is lack of cooperation between the legislature and the executive.
      1. When different parties control different branches of the government, progress cannot be made.
      2. Though the people of country look to the president as the leader, he has no means of bringing direct pressure to bear on the legislatiure.
      3. When the people, through congressional elections, change the party in control, the votes do not change the executive, who is then in opposition to the recorded votes of the electorate.
   B. A split in the party in power will often put the legislature and the executive on opposite sides of a question, in which case neither side is able to accomplish anything.
   C. The present form is undemocratic.
      1. Rigid terms of office for president and congressmen preclude the possibility of taking an issue directly to the people for their vote.

II. The cabinet form remedies these evils.
   A. The executive head is responsible directly to the legislature.
   B. A change in the party in power automatically changes the executive head of the government.
   C. The premier must be supported by the legislature or he must resign.
   D. The premier, in case of disagreement, may take the issue to the people for a direct vote.
   E. Students of government have called the British form the most democratic.

III. The cabinet form is more adequate to meet the conditions in the United States.
   A. The presidential form was devised to prevent too speedy action on questions before information respecting that action could reach the people.
      1. In those days communication was slow.
      2. Problems that required quick action were few.
   B. Rapid means of communication make it possible now for electorate to keep abreast of affairs, and to make decisions rapidly.
   C. The extended field of government makes greater correlation of legislature and executive imperative.
      1. Many problems require quick legislative action to help solve executive problems.
   D. There is no longer the fear that a strong executive may become a king, a belief that had a strong influence toward the adoption of the presidential form originally.
   E. The cabinet form has had a marked success in other federated states.
      1. Canada.
      2. Australia.
   F. It is being adopted, and suggested, for the minor divisions of government with success.
      1. Commission and manager plans of city government.
      2. It is being suggested in some form for state governments.

IV. The cabinet form may be applied to the United States without great change, other than in the selection of the executive.

A. The relation of the state governments to the national would not be changed.
B. The supreme court may still be the supreme body, with power to declare acts unconstitutional.
C. Congress may be elected in same manner as at present, except for added provision for extra elections.

V. The concentration of power in one body will have a beneficial effect.
A. The voters cast ballots when officials of real power are to be chosen.
B. The electorate can more easily keep trace of the records of a few representatives.
C. The ballot is simplified, and voting is made easier.
D. Officials give better service when more closely watched.
E. More responsible positions attract more capable men.

VI. The cabinet form of government is more business like.
A. In business the Board of Directors selects the executive who is responsible to them.
B. The premier is in the same position as the executive of a company.
1. He frames policies for the company, and directs the administration of those policies.
2. He is dropped when he fails to hold the support of the majority of the directors.
C. The legislature, like the Board of Directors, is responsible to the stockholders, the voters.

NEGATIVE

I. Our peculiar American conditions demand their own kind of government.
A. The United States has a great diversity of races and peoples.
B. It covers a great territory, with numerous other governments jointly exercising authority therein.
C. Its special problems of government demand a strong executive who is responsible to the people only.
D. The presidential form was developed in the United States to meet those needs.

II. The cabinet form requires special conditions for success.
   A. A long tradition of conservative action.
      1. Great Britain is more prone to follow custom than the United States.
   B. A small population, and a country where problems can be referred directly to the people easily.
   C. A unicameral legislature, or one house supreme in power.
      1. There are great difficulties in the way of selecting either house for such power in the United States.

III. The theory of the separation of powers cannot be taken from our government without demoralizing the country.
   A. The electorate has grown up with the idea of the division of powers and would not readjust itself.
   B. The preparation of policies for the whole country demands that all parts of the country participate in plans.
      1. In the cabinet form the premier draws the policies.
   C. Large administrative business demands a single head who can correlate the various branches of the executive department.
   D. The idea of checks and balances has proven itself valuable too many times to need illustration.

IV. Other countries have felt that the presidential form was best.
   A. It has been adopted in all American countries, except Canada.
   B. Switzerland, with a diversified population, has taken up the presidential form.
   C. Since the war, numerous European states have adopted the presidential form.
   D. It has been said that in the last twenty-seven years, no country has adopted the cabinet form.

V. The cabinet form of government is not efficient.
   A. The executive lacks permanency.
      1. He cannot carry out far-sighted plans, as he must be ready for a test vote at any time.
      2. In France, it is a very common occurence for the executive to remain in power for less than a year.

B. Under the ideal plan, administration is carried on by cooperation of all the members of Cabinet, which is poor business policy.

C. Secrecy is necessary for good working of the system.
   1. Decisions are made by whole Cabinet, acting in secret.

D. Bickering and log-rolling is necessary in the legislature to secure support for the premier and his ministers.

E. The cabinet system has not proved efficient as was shown by
   1. Experience during the war.
   2. The difficulties of Lloyd George in keeping support together.
   3. The handling of national emergencies, as strikes.

F. It permits the worst elements in party control of the government to come to the surface.

G. It has a tendency to develop into a one-man power, without gaining the benefits of authority.
   1. The Cabinet is more liable to control Parliament than the other way.
   2. To receive consideration bills must have the permission of premier, or Cabinet.
   3. Such control is held through inaction, rather than through agressive action.

VI. There would be grave difficulties in the way of adapting the system to the United States.

A. The power of the courts to declare acts unconstitutional would be effected.
   1. The courts could not hold up their authority in the face of the combined power of the executive and the legislature.

B. Either an unicameral legislature, or one supreme body of the legislature would have to be evolved to choose the executive.
   1. Equal representation in both houses is only way of keeping the powers of the two houses equal.

C. The adoption of the complete British plan would present more difficulties than a modification of the American plan.

VII. Effective means for remedying all evils are available under the presidential form of government.
   A. The President now has great influence over Congress, and can influence legislation to a desirable extent.
   B. If seats were given in Congress to members of the Cabinet, as now constituted, further cooperation would be possible.
   C. Congress is able now to ask the executive for any information that is necessary for the passage of laws.
   D. The referendum and the recall bring measures before the electorate as effectively as an election, without confusion of the issues.

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# REPRINTS

## MINISTERIAL RESPONSIBILITY VERSUS THE SEPARATION OF POWERS [1]

Formerly political scientists were inclined to criticize the American theory and practice of the separation of powers in the federal and state governments and to commend instead the cabinet or parliamentary form of organization. Thus Walter Bagehot, Sir Henry Maine, Woodrow Wilson, Frank J. Goodnow, along with many others, pointed to the advantages of cabinet or parliamentary government over presidential government as developed in the United States. A consensus of opinion was expressed by Wilson who said, "As at present constituted, the federal government lacks strength because its powers are divided, lacks promptness because its authorities are multiplied, lacks wieldiness because its processes are roundabout, lacks efficiency because its responsibility is indistinct and its action is without competent direction." [2] At one time the American plan of separation of powers was compared unfavorably with the French system in which governmental powers were divided into two branches—a policy-forming branch or "Politics" and a policy executing branch or "Administration." [3] On another occasion the tripartite system of the separation of powers was charged with responsibility for much of the political corruption prevalent in American politics.[4] The same theory of separation has often been condemned as requiring too many checks and balances and as involving a do-nothing policy for legislative and executive officers.[5] It has been not uncommon for practical statesmen, for teachers of government and others interested in public affairs to recommend the adoption of a modified form of cabinet government for federal and state governments in the United States.

[1] By Charles Groves Haines. American Political Science Review. 16 : 104-210. May, 1922.

[2] By Wilson. Congressional Government. p. 318.

[3] By Goodnow. Politics and Administration.

[4] By Ford. Cost of the National Government. ch. vi.

[5] By Howe. The Constitution and Public Opinion. *In* Proceedings of the Academy of Political Science. p. 7. October, 1914.

Although the lack of direct connection between the legislative and executive departments of the federal government has resulted in such obvious weaknesses and incongruities that many public men have urged important modifications of the present arrangements, and although the same conditions were, in part, responsible for the impotence of the federal government to deal effectively with the problems of peace and reconstruction, political developments of recent years have tempered somewhat the opposition to the American plan of separation of powers and have dulled the enthusiasm of the advocates of cabinet government. For example, it was freely predicted in England that even before the war, cabinet government was breaking down and that something of a radical reorganization was necessary. The Cabinet, said Lord Lansdowne, "became an unwieldy body. . . If only a few of them took part, the Cabinet ceased to be representative. If many of them took part, the proceedings tended to become prolix and interminable, and it is a matter of common knowledge that reasons of that kind led to the practice of transacting a good deal of the more important work of the government through the agency of an informal cabinet." It is a matter of common observation that the weaknesses of cabinet government revealed before the war were greatly augmented and resulted in an almost complete breakdown of the cabinet system during the war. The gradual evolution of the inner cabinet and the construction of an imperial Cabinet left comparatively little of the former system in effect in the last years of the conflict. In the light of this experience Englishmen have seriously considered whether, with the former cabinet system restored, it would not be advisable to provide that in time of war cabinet government should give way to a dictatorship modelled somewhat after the presidential office in the United States. In other respects Englishmen have been considering some transformations of cabinet government which would bring their governmental machinery nearer to the form prevailing in America.[1]

Cabinet government, it is well known, has not worked satisfactorily in France, and some French writers have been uncompromising critics of the system. But these criticisms savored of an academic flavor until the trials of war and reconstruction emphasized anew the defects of this form of organization. From

[1] From Report of the Machinery of Government Committee, Lord Haldane, chairman. (1918).

these experiences as well as from the trend of politics prior to 1914, Frenchmen have come to favor two proposals which would inaugurate in France a separation of powers modelled in certain essential respects after the American plan. The first of these proposals, expressed in the language of President Millerand, is that the nation's will "manifested by the voice of its representatives, needs, in order to be accomplished and respected, a free executive power under the control of Parliament." It is the express intention of the newly elected president to participate of his own initiative in the foreign affairs of the nation and to exercise in other respects a "free executive power," a policy which, if carried out to any considerable extent, will have a tendency to change the government of France in the direction of presidential government. The other proposal, also referred to in the address of President Millerand, is the establishment of an independent judiciary with the power to review legislation along lines similar to the practice of American courts. Those supporting this proposal are in control of the French government, and it is thought to be only a matter of time until either by amendment to the constitution or by judicial interpretation based on the former declaration of rights French courts will be exercising the power of judicial review of legislation. With a free executive power and an independent judiciary each modelled largely after the American system, the French government will no longer have real parliamentary government.

The principle of the separation of powers in practice has resulted in three points of view and methods of interpretation which have led to quite different results. These are: the French theory, the English theory and the American theory.

Although the government of France was affected by the eighteenth century theories of the separation of powers and particularly by the proposal of Montesquieu relating to the separation of powers, the interpretation of these eighteenth century theories led in France to the proposition that courts ought not to interfere in the exercise of legislative powers and are not privileged to suspend the execution of the laws. The French have, therefore, denied to the courts the right and duty of passing on the validity of legislative acts, claiming that this would be an interference with the independence of the other departments. Under the present constitution France has continued this interpretation and has adopted parliamentary government, with the result that

France is governed under what is known as legislative supremacy. But owing to the fact that the French system of government is based on the Roman civil law, and that Frenchmen are accustomed to methods and practices whereby executive and administrative officers perform a much larger part in the making and enforcing of law than is customary in Anglo-American countries, the legislature is much more limited in its scope of action and the administration consequently enlarged in its functions. In fact, in all countries which have adopted as a basis for government the Roman civil law, executive and administrative officers participate to a much larger extent in the forming of government policies (with almost complete initiative in the framing of laws and in determining the details of administration), than is customary either in England or the United States. Although the legislature, then, along with the principles of parliamentary government, is supreme in France, its supremacy applies to a more restricted field than in Anglo-American countries.

In England there has never been a clear and well-marked division of powers such as was suggested by Montesquieu. Since the development of parliamentary government and the assurance of legislative supremacy with the dominance of the House of Commons, legislation and execution have been combined to such an extent that no strict separation between these functions is practiced in the English government. The courts, although in final analysis subordinated to the functions of making and applying the law, have in England, under what is known as the rule of law, a semi-independent status. They are privileged unless specifically denied this power by acts of Parliament, to restrict, limit and under certain circumstances to set aside the acts of executive officers. Thus, although the courts are not privileged to declare legislative acts invalid, they may, by the process of interpretation, have a controlling effect on the application of various branches of law in England. This exception does not seriously affect the general principle that England is ruled under legislative supremacy with the combination of legislative and executive power vested in the Cabinet and prime minister. The English system of government is a government by a few—an executive committee—under an arrangement of direct responsibility with the lines of control generally visible and open to the constant pressure of public opinion.

The theory of the separation of powers which was evolved in the United States assumes three well-defined and more or less independent organs of government. Each of these organs is regarded as within its sphere to be beyond the control of the other organs. Each is assumed to have certain discretionary rights, privileges and prerogatives. Since the powers and duties of the legislature and executive are usually more clearly defined, and since it is the duty of the courts, as developed in American practice, to define the limits of these authorities, the judiciary becomes the guardian of the liberties and privileges of the citizens when the executive or legislature exceeds the powers outlined in the fundamental law. The American principle of the separation of powers has prevented the combination of the legislative and executive departments which is characteristic of most European governments.

A marked difference between the American and the English-French systems arises from the fact that under cabinet government the prime minister and the other members of his Cabinet may be members of the legislature; whether members or not they have the privilege of participating in the activities of the legislative body. In fact the ministers are expected to prepare legislation affecting their departments, to present the measures to the legislative body, and to defend them when under consideration. The peculiar theory adopted in the United States has prevented this arrangement, with the result that with the exception of the reading of the annual message to Congress by the president, the president and his cabinet officers cannot visit and participate in the proceedings of Congress and can only deal with the legislative body in an indirect way by appearing before committees, by sending communications or by trying to influence Congress through the press or by patronage and other roundabout methods. A similar practice prevails in the state governments. In the American system the lack of unity in action and execution renders the processes of government invisible and makes the lines of responsibility indirect and covert.

The English-French system of cabinet government with the unity of governmental powers has been adopted extensively in Europe and elsewhere. It is now in operation in the self-governing colonies of Canada, Australia, and South Africa, and in Belgium, Italy, France, Netherlands, Spain, Norway, Chili, and

has been partially applied in Denmark and Sweden. It has recently been incorporated in a modified form in the newer constitutions of Europe, such as those of Germany, Czechoslovakia, Poland and Jugoslavia. The presidential system, as it prevails in the United States, was accepted by countries like Japan and Germany before the war, and is commonly applied in Latin-American countries. Executives in these countries are given greater authority than is allotted in the countries with cabinet government. So far as information is available, with the exception of Chili and, to a limited extent, Peru, the Latin-American countries give the president as executive an independent position. In Venezuela, for example, where the constitution obviously attempts to establish parliamentary responsibility, this provision has in practice been ignored.

Intermediate between cabinet and presidential government is the Swiss system, which places the executive authority in an executive board selected by the Federal Assembly and required to work through and with the assembly but selected for a given term and not subject to removal by a vote of lack of confidence. Members of the federal council are usually members of one of the chambers and the relations between the councillors and the legislature are very intimate. As in other European countries the councillors as ministers take the initiative in preparing measures for consideration by the houses. The plan of the Uruguayan constitution also creates an independent and responsible president with powers similar to those of an American president, particularly in relation to foreign affairs, police, etc., but it establishes a National Council of Administration composed of nine elected members who have control over branches of the administration not granted to the president, such as public instruction, public works, labor, industries and agriculture, charity and sanitation. The council prepares the budget, supervises elections and renders an account of all its activities to the legislative assembly. Councillors and members of the ministry may participate in the sessions of the assembly but may not vote. Ministers are held responsible for their own acts. The president and ministry are given the right to present bills to the chamber or to offer amendments to bills under consideration.

The new Peruvian constitution likewise sets up an independent executive on the American plan but requires that the

acts of the president be signed by a minister to give them effect. With the approval of the president ministers may present to Congress proposals for laws which they deem desirable. They may take part in the debates but may not vote. In a certain measure ministers are jointly responsible for general acts and individually for the acts connected with their departments. Ministers may be forced to resign by vote of lack of confidence in either house of Congress.

The question of the separation of governmental powers and their distribution among the various branches of government remains, then, as one of the foremost issues of modern politics. A number of countries are in the process of adopting some form of cabinet government, whereas others are inclined in part, at least, to introduce certain features of the American presidential system. Each system appears to have certain advantages which appeal to the proponents of the other system. It will be well, therefore, to consider some of the issues which have arisen in connection with the distribution of powers and to discuss briefly their effect on the organization and administration of modern governments.

Among these issues are the growth of executive powers and discretion, the decline of legislative authority in relation to the making and adoption of the budget, the necessity of government by permanent, professional officers with the consequent effect upon the making and execution of the laws, and the distrust and dissatisfaction with present legislative bodies. A brief consideration of each of these will render somewhat more specific a consideration of the present situation in relation to ministerial responsibility and the separation of governmental powers.

One of the striking facts with regard to the development of modern governments is the extent to which executive powers have been increased, and executive discretion in the administering of law has been enlarged. This process has been carried to its greatest extreme, of course, in connection with the war powers, under which government by law and by rule became in large part government by the wish and discretion of administrative officers and military leaders.[1] But it is not only in time of war that this tendency has become apparent, for the modern tendency to place authority in the hands of the heads of depart-

[1] See Willoughby and Rogers. An Introduction to the Problem of Government, for a brief summary of the modifications of the rule of law in England during the World War. p. 95.

ments with power to issue rules and ordinances, and to create various boards and commissions chiefly executive in character, but with powers that are legislative, executive and judicial in scope, all tend to emphasize this fact, namely, that modern governments are going in the direction of greatly enlarged executive powers.[1]

A keen observer of the tendencies in modern governments has recently pointed out that so far as the American governments are concerned, we have passed through three periods: first, one in which there was a tendency to place great responsibility and authority in the hands of legislative bodies; second, when the legislative bodies declined in power and esteem and many limitations were placed upon the exercise of powers, the judiciary, as the protector of constitutions and the guardian of these limitations, was given extraordinary powers and duties; third, when legislative supremacy and judicial supremacy have declined and instead we find ourselves in the process of elevating to an extraordinary place the executive departments of the government. No doubt the process of shifting from one department to another will vary according to the peculiar times and conditions through which a nation passes, yet the fact remains that the theory of the separation of powers in its former sense of real separation and independence appears to be applicable only to a primitive and undeveloped society. The modern complex and greatly expanded functions of government require an enormous extension of the executive functions and a consequent limitation by comparison of the functions of the other two departments.

The passing upon the budget which involves the voting of taxes, and the appropriation of public money was once regarded as the very essence of the power of legislative assemblies and the fundamental basis of representative government. To Edmund Burke, liberty from a governmental standpoint inhered in a large part in the control of the purse strings. But the situation has changed, and the observation of Burke appears no longer to be applicable. The voting of appropriations and the levying of taxes by legislative bodies alone have resulted in what is commonly known as "pork barrel" methods, log rolling, and governmental extravagance on a scale heretofore unknown.

[1] From Fairlie. Administrative Legislation. *In* 18 Michigan Law Review. p. 181.

The recognition of this weakness in legislative-made budgets has in many countries resulted in the turning over of this function to the executive and the placing of the responsibility for the making of the budget upon the ministry: the chief function of the legislature becomes the turning of the light of publicity upon the ministerial conduct. And even the function of publicity is being taken over by the press and other agencies. This practice has been carried to its farthest extent in England, where the Cabinet makes the budget and where the House of Commons has in practice given up its function of making any changes in the budget as prepared by the ministry. The tendency has been to weaken the authority of the legislature in this field and to strengthen the position of the executive wherever an attempt has been made to increase governmental efficiency and to reduce the extravagance of legislative bodies in which individual members are dominated by private and local interests and log rolling methods inevitably prevail.

The extraordinary enlargement of governmental functions and the increasing complexities of the problems involved in public administration have rendered it necessary to modify seriously many of the principles and practices applicable to primitive agricultural and undeveloped societies. The complexity of governmental operations and the many technical and intricate issues concerned, have made it indispensable to secure for the operation of government a large number of specialists or professional officers. The advice and assistance of such experts, it is thought, can be secured to the best advantage when the processes of legislation and administration are combined. In practically every other government except that of the United States, either the ministers or officers connected with the government have control of the preparation of bills and their presentation to the legislative bodies. Executive initiative in this process tends to place the matter under the control of professionals who develop standards and a technic of legislation with which the American legislative product compares quite unfavorably. In England and in France there has been developed a permanent and professional class of administrators who by training and experience are qualified to deal with the increasing complexities of administration. Though the methods of securing these permanent professional administrators differ, the general result upon the conduct of public affairs is quite similar. It has been found

extremely difficult to secure and make use of permanent and professional officials under a system of strict separation of powers and the independent authority of the departments concerned.

The distrust and dissatisfaction with present legislative bodies is one of the noteworthy characteristics of modern political thinking. Representative government, which was once looked to as the panacea for good government and as an indispensable requisite of the development of democracy, is now on trial. There is a profound dissatisfaction with the functions of representative bodies in countries like England and France which have the parliamentary or cabinet systems, and there is the same and perhaps more serious dissatisfaction with legislative bodies in presidential countries such as the United States.[1] It is claimed that our representative bodies are not really representative; that certain classes only, chiefly the classes of money and property and professional interests, are represented in legislative bodies, and that the great mass of workers and other large classes are not. This objection to representative bodies is leading to a movement to create assemblies based upon industries and professions which would be given authority to deal with many of the questions relative to work, hours of labor, sanitary conditions, prices, wages and matters of this kind which are not dealt with satisfactorily by the present politically representative bodies. There seems also to be a general agreement that representative bodies are either inefficient, wasteful or corrupt, and in some instances the charge is made that all three of these weaknesses are apparent in our present legislative bodies.

These problems have brought about a reexamination of the general organization and functions of government whether presidential or cabinet in form. Numerous reports and investigations have been made, such as the Haldane Report in Great Britain, and reports by committees on the reorganization of administration in the United States, in which the present organization of the cabinet and administrative functions and duties are criticized with suggestions for reform. A few conclusions seem to follow from the reexamination which is under way. First, it is taken for granted that whether the government be parliamentary or presidential, there will necessarily be a government by a few,

[1] See Laski, Foundations of Sovereignty, p. 34.

either by a president and a Cabinet or by a prime minister and a Cabinet. It is also conceded that an elective body can serve effectively only as a board of advisers and critics, and that for this purpose the large assemblies which we now have are cumbrous and unwieldly; that a relatively small body elected for long terms on some plan of proportional representation to which would be selected those who are familiar with local conditions as well as with some of the essential principles and practices of government administration seems a requirement, if government is to keep pace with the growth of its functions and the increasing complexity of the conditions with which it must deal. It is also realized that governments are acquiring new and more complex functions and that a large part of the time of those connected with the government must now be given to the collection of information, in the form of investigation and research, in order that legislative and administrative officers may deal intelligently with the very difficult problems that arise.

To meet this situation, the Haldane Report included among the suggested executive departments one on research and information. Perhaps an even better arrangement would be to have research divisions and bureaus connected with all the departments and in proportion to the need of technical assistance and information. In the light of these principles the American theory of the separation of powers appears largely as a device for a policy of inaction—an excellent plan to encourage politicians to escape responsibility and to permit private individuals and corporate organizations to defy public powers with impunity. In the words of a caustic foreign critic, if the desire is to secure an effective check on radical and progressive movements, if the intention is to place corporate organizations in an impregnable position so far as government regulation is concerned, the American theory of the separation of powers is undoubtedly a well-conceived device for this purpose. From the standpoint of responsible and efficient government, the separation of powers stands as an obstacle which must be removed if the government of the United States is to make progress along governmental lines and is to be prepared to meet conditions both domestic and foreign.

A large part of this difficulty could be overcome if the president and his cabinet were made directly responsible for the formulation of legislation as respects the administration, and

the cabinet members were free at any time to appear and debate in the houses. It seems necessary, therefore, that an extreme and indefensable separation of powers in the United States, which was largely the result of interpretation, be abandoned in order to make our government more responsible and more efficient. This could be done by a mere general agreement, just as the existing theory is largely based upon the peculiar conception of officers, who were responsible originally for the interpretation and application of our constitutions. Modifications could be made through the simple process of interpretation by which they were engrafted upon early American institutions. The almost universal tendency of European nations to unite to a considerable degree the legislative and executive functions should lead us ultimately to the conclusion that our present system, a disjointed and indirect system of legislative and executive relations, should be revised.

While defects in our present system of separation of powers and lack of ministerial responsibility are apparent, it is significant that we have in our government certain advantages, such as the ready and easy concentration of power in time of war, which the leaders of thought in foreign governments would like to adopt. And the American government need not abandon the essential principles of its separation of powers. Rather should it modify its practices and procedure so as to secure ready and open access of the president and his cabinet members to the houses of Congress, and a more definite correlation of legislation and administration. This can be done without breaking down the essential features of our existing governmental order, which despite its many defects has worked fairly well. It is evident from a comparison of the cabinet and presidential governments, that cabinet government can be improved by the application of principles now made a definite part of the presidential system, and that presidential government can be improved by taking advantage of the well-known practices which have proved so successful in the countries with a cabinet government. Each has advantages which deserve continuance and development. The combination of the features of both plans is apparent in a number of recent constitutions.

Certain tendencies are particularly notable in recent constitutions. Three are marked enough to merit listing: (1) To create a semi-independent executive, but to require ministers to assume

responsibility for all important political acts of the president either individually or collectively before the legislative chambers. (2) To give the ministers free access to the legislature to take part in debates, to present measures and, if members of the legislature, to vote. (3) To place upon ministers the duty of preparing the budget, and the responsibility of formulating laws and presenting them to the legislative bodies.

With a few exceptions the tendencies are distinctly in the direction of the adoption of the essential features of cabinet government with such modifications as will leave place for a president and premier each with certain distinct and independent functions. Which of the two, president or premier, will exercise the greater powers will depend to a considerable degree upon the political conditions of the country, the personality of those holding the offices and the particular influences at work favorable either to cabinet or presidential machinery.

But mere palliatives such as the making of the budget by the president and his Cabinet, and the combination of executive and legislative powers largely in the same hands, though they may improve the working of existing governmental machinery will only tend to call attention anew to certain obvious facts, namely, that modern representative assemblies are failing in the performance of some of their most important functions, that the present bodies must be radically changed or give way to other forms of political organization, and that the contest to secure and retain representative and responsible governments will require as in past generations constant vigilance and increased interest on the part of political thinkers.

It seems necessary for the consideration of the problems of representative government and ministerial responsibility to bring under criticism certain well-known political ideas and traditions. With regard to the organization of government just as in the field of law, mere tinkering with political forms and organizations will not meet the requirements necessary to adapt political institutions to modern conditions and tendencies. The leaders in political science will of necessity be required to devote more effort to the preparation of programs of reform and reconstruction involving entirely new procedure and practices and to the campaign for acceptance of these reforms as parts of the governing processes. Such reforms, as is the case with the plans for reorganization of courts fostered by various bar associations,

will be adopted slowly. But the need in the field of political science with respect to radical reconstruction, both from the standpoint of legislation and administration, is equally as necessary as constructive reforms in the field of law. Half-way or temporary measures, such as the commission form of government in cities or the plan of administrative consolidation of bureaus, commissions and other administrative agencies in state governments, though they may be serviceable in the direction of more effective administration, do not remove the fundamental defects in modern government. Nothing short of a new type of legislative body and a very much changed form of executive and administrative organization, with a well worked out plan of correlation between the two departments, will render modern governments competent to meet the exigencies of present political, social, and economic life.

## A COMPARISON BETWEEN CABINET GOVERNMENT AND PRESIDENTIAL GOVERNMENT [1]

### (A) *What Is the Essential Difference Between Cabinet Government and Presidential Government?*

#### As to Cabinet Government

By the cabinet, writes Bagehot:

> We mean a committee of the legislative body [i.e. Parliament] selected to be the executive body. The legislature has many committees, but this is its greatest. It chooses for this, its main committee, the men in whom it has most confidence. It does not, it is true, choose them directly; but it is nearly omnipotent in choosing them indirectly.[2]

This Cabinet, including the prime minister himself, who is the head thereof, is in theory chosen by the King, but it is in fact selected by the prime minister from among the leading members of the party of which the prime minister is the head. The members of the Cabinet are of course technically the King's servants. The reigning monarch had, according to Bagehot, as indeed he still has, though now more rarely than fifty years ago, the power of actually deciding who shall be invited to be the

[1] By A. V. Dicey. Nineteenth Century. 85 : 25-42. January, 1919.
[2] By Bagehot. English Constitution. New ed. 1878. p. 11.

prime minister among the leaders of the party which commands a majority in the House of Commons. The prime minister again has to choose his associates, but he only chooses from among a charmed circle. The Cabinet is made up, or at any rate was made up in Bagehot's time, of the parliamentary heads of the chief departments through which the executive government of the country is carried on. . . Cabinet government, as it was developed after the revolution of 1688, had come to mean not the separation but the fusion of at any rate the executive and the legislative authority of the state. A second leading characteristic of cabinet government in England is the power generally possessed by a Cabinet to dissolve the Parliament by which it has been created or supported. This cannot be better described than in Bagehot's own words. He writes:

[The cabinet] is a committee which can dissolve the assembly which appointed it; it is a committee with a suspensive veto—a committee with a power of appeal. Though appointed by one Parliament, it can appeal if it chooses to the next. . . But neglecting. . . small and dubious exceptions, the Cabinet which was chosen by one House of Commons has an appeal to the next House of Commons. The chief committee of the legislature has the power of dissolving the predominant part of that legislature—that which at a crisis is the supreme legislature. The English system, therefore, is not an absorption of the executive power by the legislative power, it is a fusion of the two. Either the Cabinet legislates and acts, or else it can dissolve. It is a creature, but it has the power of destroying its creators. It is an executive which can annihilate the legislature, as well as an executive which is the nominee of the legislature. It *was* made, but it *can* unmake; it was derivative in its origin, but it is destructive in its action.

If we fully master these two leading characteristics of the English Cabinet, viz. that it links or fuses together the English executive and the English legislature, and next that it can in general dissolve the legislature, we shall be able to carry our author's main doctrine with regard to cabinet government somewhat further than he does himself. It really links together the main political parts of the whole English Constitution. Take, for instance, a distinction framed by Bagehot himself between the ornamental part of the Constitution, mainly represented by the Crown, and the efficient part of the Constitution, mainly represented by the Cabinet. These are curiously linked together in a way which is not at first perceived. The existence of the

Cabinet protects the King from responsibility for his acts, and on the other hand the vagueness of the King's powers, most of which are exercised through the Cabinet, increases the moral and even the legal authority of the Cabinet. So again the power of the Cabinet to exercise the King's right to dissolve Parliament really ensures the permanent harmony between the Cabinet or executive power, and the electorate. It links again the electorate and Parliament, or in popular language the legislature and the people.

### As to Presidential Government

The President for the time being constitutes the executive of the United States: the founders of the United States felt strongly the necessity for having a vigorous executive.

They therefore made an enlarged copy of the state governor, or, to put the same thing differently, a reduced and improved copy of the English King. He is George the Third shorn of a part of his prerogative by the intervention of the Senate in treaties and appointments, of another part by the restriction of his action to federal affairs, while his dignity as well as his influence are diminished by his holding office for four years instead of for life. His salary is too small to permit him either to maintain a court or to corrupt the legislature; nor can he seduce the virtue of the citizens by the gift of titles of nobility, for such titles are altogether forbidden. Subject to these precautions, he was meant by the Constitution-framers to resemble the state governor and the British King, not only in being the head of the executive, but in standing apart from and above political parties. He was to represent the nation as a whole, as the governor represented the state commonwealth. The independence of his position, with nothing to gain or to fear from Congress, would, it was hoped, set him free to think only of the welfare of the people.

This description of the president's office given by Bryce reveals at least half the secret of the real difference between presidential government and cabinet goverment. The government of the president in the United States means the real administration of affairs by an executive officer who may, when occasion requires, exert considerable power, but is an official whose authority is under the Constitution definitely restricted so that he may not misuse it as, in the eyes of American constitutionalists, George the Third misused the power of an English King.

The other half of the same secret is the immense influence exerted by Montesquieu's L'Esprit des Lois in 1787 on the mem-

bers of a convention who created the Constitution of the United States. It was to them a bible of political philosophy, and no doctrine to be found therein met with more complete acceptance than the dogma that the separation of the three powers—namely, the executive, the legislative, and the judicial power—formed the distinguishing characteristic of a free government. Hence the attempt, to a great extent made with success under the Constitution of the United States, to mark out for the president (the executive), for Congress (the legislature), and for the Supreme Court (the judicature) of the American commonwealth separate and independent powers. Add to these considerations that the very scheme of a federal government requires separation between the authority of the federal, or national, government, and the authority of each of the different states which make up the federation. This moreover was a practical necessity, for none of the thirteen Colonies which had acquired independence of England would have assented to any Federal Constitution which had not left to each of them very considerable power of self-government. From the very nature of things however this separation of powers could not be rendered absolutely complete. The president, for example, ought strictly to have no legislative power, and on the other hand he ought, in the legitimate use of his executive power, to be absolutely uncontrolled by the Houses of Congress. Yet the Constitution bestows upon the president not only a suspensive but in effect an absolute veto on bills passed by both Houses of Congress, provided only that the president's veto is in either House of Congress supported by more than one-third of that House. Hence too, though no resolution of either House of Congress can in strictness interfere with the exercise by the president of authority given to him by the Constitution, the Houses of Congress, and especially the Senate, have in certain respects in practice encroached upon the presidential powers. But, if the matter be looked upon from a general point of view, presidential government as it exists in America, and cabinet government as it exists in England, are two forms of executive government each whereof may be directly contrasted with the other.

This contrast may be thus stated. The president is the real American executive, but his executive powers are limited by his being elected only for four years, by his being through unbroken custom not re-eligible for more than once; by the vast amount of

power left to each of the states of the Union; by his having no right to dissolve Congress; by his having no legislative authority whatever, except that of vetoing any bill when his objection thereto is supported by a minority of over one-third of either House of Congress. Cabinet government, on the other hand, means at bottom, and as practised in England, the fusion of the executive and of the legislative authority, and the power of the Cabinet in many circumstances to dissolve the Parliament which has created or supported it. A Cabinet, in short, supported by the House of Commons which can also count upon the support of the electorate, has as much authority as can well fall to any government. It is however a kind of government which can never be secure of its existence unless it continues to have the support of the House of Commons, and this in modern circumstances cannot long be relied upon by any Cabinet which has definitely lost the support of the electors.

### (*B*) *What Are the Respective Merits and Demerits of Cabinet and of Presidential Government?*

To find an answer to this question it will be convenient and instructive to test the virtues and the defects of each kind of government, first in times of peace, and next in times of war.

#### As to Cabinet Government

(1) *In time of peace*—The merits of this kind of government, assuredly, in England at least, become most visible in times of peace. It is worth while to sum up the grounds on which Bagehot held, for the most part quite truly, that cabinet government was, at any rate during a peaceful era, of immense benefit to England.

*First.* A cabinet government ensures the presence in the Cabinet of men of ability. This is so partly because the prime minister is almost of necessity one of the few leading men in Parliament; and such leadership can rarely be obtained except by ability of some kind above the ordinary level, and by ability which is known to the Houses of Parliament. The prime minister again is, from the desire to carry on his government with success, almost compelled to choose colleagues of parliamentary capacity, and who will be approved of by the prime minister's supporters in Parliament. The Houses of Par-

liament moreover are better electing bodies than would be the electors, and it may be added, indirect election through the prime minister is more likely to produce the choice of able men than would the direct choice of members of the Cabinet by Parliament. The system of direct election is apt often to favour the choice not of the men most desired by any electoral body, but of the men who give least offence to the majority of the persons who elect them.

*Second.* Cabinet government educates the nation. The debates in Parliament are full of interest; they not only deal with important matters but they also determine what is far more interesting to the mass of electors, whether a party to which a man belongs shall or shall not retain or lose office, and, what is most interesting of all, decide the personal question whether the leader an elector follows, say Mr. Asquith or Mr. Lloyd George, shall take or retain office. And to listen (even through newspapers) to parliamentary discussion and debate is, or was when Bagehot wrote, a valuable education for the nation.

*Third.* Cabinet government possesses a special kind of flexibility which at times may be of extreme advantage to England. This quality is shown in various different ways: It is displayed, for example, by the power of Parliament suddenly to remove from office a Premier of ability and highly respected and to put in his place another leader who possesses, or is supposed to possess, special qualities, e.g. superabundance of vigour and even of combativeness, which fit him to meet some crisis, e.g. the conduct of a war, and were not very prominent in the character of the Premier whom he succeeds. Bagehot certainly was very much impressed by the effect in the conduct of the Crimean War of substituting a Cabinet in which Palmerston was Premier for a Cabinet of which Lord Aberdeen was the head. He quotes, in obvious reference to this change, a saying of the time that "We turned out the Quaker, and put in the pugilist." This flexibility of cabinet government has shown itself again during the present war, and in a different form. The Cabinet, from its blending together executive and legislative powers, is capable, without anything like a revolution, or at any rate without any proceeding which the mass of Englishmen feel revolutionary, of extending the authority and changing the form of the executive itself. The Defence of the Realm Acts have bestowed upon the Government of England powers such as no English executive has ever before possessed; they might be

called despotic, were it not that Englishmen living in England have felt that they themselves were not really subject to a tyranny. The creation again during the war of first the War Committee, and finally the War Cabinet, has in effect created something closely resembling a new kind of executive for the government of England.

Here however it should be noted that Bagehot's high estimate of cabinet government cannot be appreciated at its full worth by any critic who does not bear in mind more than one important consideration. There is latent, in the first place, in Bagehot's whole speculations on the English Constitution the assumption that good government, at any rate in what is called a free country, is promoted and secured by the maintenance in office of men of marked ability and high character, by the prevalence throughout the whole country of real debate and free discussion, and by the general recognition of the fact that legislation and, above all, the carrying out by legal means of great reforms, is one of the most difficult tasks which any man, or body of men, can undertake. At the present moment this faith in freedom of discussion, and in laborious forethought as the necessary means for obtaining good legislation, has gone out of fashion. Every politician, whatever his party, is ready to pledge himself to obtain at a moment's notice, for every man or woman who is an elector, any blessing which he or she may desire, whether it be a permanent living wage for every wage-earner throughout the kingdom or the rapid creation of a federated British Empire which shall grant Home Rule to every part of the Empire, and yet retain all the concentrated power of the Imperial Parliament which has brought England and the Dominions triumphantly through the most terrible war of which Englishmen have ever had experience. Of these hopes or dreams Bagehot knew nothing. He believed above all things in freedom of discussion and in statesmanship grounded on thought and wisdom. And it was because of this belief that he trusted in English cabinet government as the best means of ensuring to a free people the rule of men of intelligence and character who themselves trusted in political progress guided by thoughfulness. Even persons, in the second place, who sympathise with Bagehot's political principles of action, must admit that since he wrote his English Constitution many changes have taken place which have seriously invalidated some part of his claim for the superiority of cabinet government even in times of peace.

The main changes which affect his arguments in favour of cabinet government as it existed in England may be brought under two heads: Since 1866 England has become more and more of a democracy. A certain kind of unchangeableness in form, and even in feeling, which is characteristic of English constitutionalism, still conceals an immense revolution which has been effected, or rather which has grown up, without the use of violence, and with very little breach of law. George the Fifth is, and most deservedly is, more popular than any King who has preceded him. Of anti-monarchical feeling there is little or no sign in England, but the Constitution has become democratic. I purposely use popular language because it is most intelligible and establishes the point I wish to press home. The first Reform Act gave predominant power, it was said, to the 10*l.* householders, and they, as Bagehot has pointed out, were or represented the middle classes who were much inclined to pay deference to the great landowners and the men of wealth who were certainly richer, and many of them far more versed in politics and in public life than the average 10*l.* householder. The Reform Act of 1867 transferred power from the middle classes to all householders, including in that number a good many lodgers. There was thus created an electoral constituency for the United Kingdom of about six million, three hundred thousand men. What may be our present parliamentary constitution, and what may be the exact number of the electorate under the Representation of the People Act 1918, no one can venture confidently to assert. The act changes our whole electoral system from top to bottom. It creates an electoral body which it is said will exceed seventeen million of electors, among whom are contained for the first time women who, it is also said, will number six million of the whole electoral body. Another change at least equally important is one of opinion. From 1832 till toward the end of the nineteenth century the men who guided the legislative action of England did in general, subject of course to some considerable exceptions, deprecate the action of the state in matters which most persons, as it was then imagined, could best discharge for themselves. We all adhered, or professed to adhere, to the principle of *laissez-faire*. This state of feeling has in public life at any rate become a matter of the past. One illustration of this change of opinion will establish my point. Persons whose political memory reaches back to fifty years ago were taught the folly of any state which attempts to fix by law the rate of wages.

During 1918 our Parliament has fixed by law the rate of wages for class after class.

These two changes—the one in the constitution of our electoral body, the other in national opinion with regard to the proper sphere of state intervention—explain or emphasize qualifications which now must be introduced into Bagehot's picture of cabinet government. The prime minister himself is no longer elected wholly by Parliament. A statesman known to the country is often now in practice designated as worthy to be appointed, or to be retained, as prime minister not by the voice of the House of Commons, but by the voice of the electors expressed at a general election. The general election will have decided before this article appears in print whether Lloyd George shall remain or Asquith become prime minister. A prime minister too is now elected more or less for a fixed period, namely the time which will expire with the dissolution of a particular Parliament, and which cannot legally exceed five years. And he in turn may appoint his colleagues much less with a view to gaining the approval of the House of Commons than to satisfying the claims of different parties throughout the United Kingdom to be duly represented in his Cabinet. The party system lastly has become within the last thirty years a great deal more organised. The old two-party system has all but vanished. We have still a party of Ministerialists who support the Government and an Opposition who attack it. But during the Parliament just dissolved there were represented in the House of Commons at least four different parties, and in the next Parliament the number of them may probably be increased. In any case Bagehot's picture of cabinet government which represented truly enough its general character in 1865-6 needs a good deal of modification before it can be treated as a completely accurate account of cabinet government in 1918. A censor might say that the Cabinets of today had approached more nearly than fifty years ago to presidential government without obtaining the merits which can be ascribed to that form of government.

(2) *In time of war*—Whilst the virtues of cabinet government are obvious during a peaceful period, such as was for the most part the reign of Queen Victoria, its defects become more obvious in a time either of foreign or of civil war. They may, for our present purpose, be thus summed up:

*First.* Cabinet government is government by a council, and

from that very circumstance is likely to be deficient in the energy, promptness, and decisiveness which may mark the action of a wise ruler of men who, whether he be a despot or an American president, is at any rate entrusted even for a time with real power, that is to say, can if he chooses carry out the policy which he himself thinks advisable and likely to benefit the country of which he is more or less the ruler. Councils of war are, just because they are councils, proverbially discredited. One man of real ability as a general is proverbially more likely to act with vigour than a council of five or six generals.

*Second.* Cabinet government as it exists in England has another defect of a more subtle character which has not received quite the attention which it deserves. In England the members of a Cabinet, from the Premier downwards, are party leaders. They have risen to power by partisanship; they are maintained in power by partisans, and they know that the defeat of their party, or anything which leads to the break up of their party, means to the Cabinet loss of office, to each of themselves loss of reputation, and also know—what to men of the very highest character tells for more than any other consideration—that loss of office means in general the failure to carry out the policy which they really believe to meet the wants of the country. The weakest part of cabinet government is that it is based on partisanship, and it is all but impossible to transmute partisanship into patriotism. This assertion does not mean that public men are not public-spirited, but it does mean that the whole English parliamentary system, and the cabinet government which is its outcome, makes it extremely difficult even for the best of citizens to avoid thinking and feeling as partisans.

*Third.* Then again the quality of freedom of discussion which Bagehot rightly prizes so highly has its weak side. You may have, both in Parliament and in the Cabinet which represents the Parliament, discussion which wastes time and may lead to no result, or even to disaster.

That these defects and others like them should be of more consequence in time of warfare than in time of peace will be easily conceded.

### As to Presidential Government

(1) *In time of peace*—Presidential government does not appear at all at its best in such a period.

In quiet times the power of the president is not great. He is hampered at every turn by the necessity of humouring his party. He is so much engrossed by the trivial and mechanical parts of his work as to have little leisure for framing large schemes of policy, while in carrying them out he needs the co-operation of Congress, which may be jealous, or indifferent, or hostile. He has less influence on legislation, that is to say, his individual volition makes less difference to the course legislation takes, than the speaker of the House of Representatives. In troublous times it is otherwise.

After all, too, a president need not be a man of brilliant intellectual gifts. His main duties are to be prompt and firm in securing the due execution of the laws and maintaining the public peace, careful and upright in the voice of the executive officials of the country. Eloquence, whose value is apt to be overrated in all free countries, imagination, profundity of thought or extent of knowledge, are all in so far a gain to him that they make him "a bigger man," and help him to gain over the nation an influence which, if he be a true patriot, he may use for its good. But they are not necessary for the due discharge in ordinary times of the duties of his post. Four-fifths of his work is the same in kind as that which devolves on the chairman of a commercial company or the manager of a railway, the work of choosing good subordinates, seeing that they attend to their business, and taking a sound practical view of such administrative questions as require his decision. Firmness, common sense, and most of all, honesty, an honesty above all suspicion of personal interest, are the qualities which the country chiefly needs in its chief magistrate.

The utter insignificance of many presidents is explained by Bryce's language. It does not at all wholly depend upon the character of the men themselves. The United States have not had till recently much to do with foreign policy. They were, except during the War of Secession, not much exposed to violent disturbance, and one must add that in ordinary times each state would be able to provide for the maintenance of order. Any extraordinary statesmanlike talent which a president possessed he might therefore have little opportunity of displaying, and on the other hand the fact that the possession of remarkable talents was not always required in a president at one time encouraged party managers and party conventions to put forward as candidates for the presidentship men who, though by no means the most eminent of American politicians, might happen to have a fairer chance of election than some distinguished party leader.

(2) *In time of war*—According to Bagehot presidential government, both in time of peace and in time of war, between

which he does not very accurately distinguish, possesses none of the special merits of cabinet government, but in fairness to Bagehot it must be noted that he uses the defects of presidential government as in America mainly with a view to bring into relief the full virtue of cabinet government. However this be, Bagehot hardly realises that during a time of civil or of foreign war a president may, and generally will, if supported by the nation, possess a concentration of power equal to, and even exceeding, that of an English Cabinet. Note on this point the language of Bryce:

The difficulty in forming a just estimate of the president's power arises from the fact that it differs so much under ordinary and under extraordinary circumstances. This is a result which republics might seem specially concerned to prevent, and yet it is specially frequent under republics, as witness the cases of ancient Rome and of the Italian cities in the Middle Ages. In ordinary times the president may be compared to the senior or managing clerk in a large business establishment, whose chief function is to select his subordinates, the policy of the concern being in the hands of the board of directors. But when foreign affairs become critical, or when disorders within the Union require his intervention—when, for instance, it rests with him to put down an insurrection or to decide which of two rival state governments he will recognise and support by arms—everything may depend on his judgment, his courage, and his hearty loyalty to the principles of the Constitution.

Hence the strong features of presidential government in the time of war.

*First.* The authority of the president if supported by the nation may become, and probably will become, almost despotic.

The domestic authority of the president is in time of peace small, because by far the larger part of law and administration belongs to the state governments, and because federal administration is regulated by statutes which leave little discretion to the executive. In war time, however, and especially in a civil war, it expands with portentous speed. Both as commander-in-chief of the army and navy, and as charged with the "faithful execution of the laws," the president is likely to be led to assume all the powers which the emergency requires. How much he can legally do without the aid of statutes is disputed, for the acts of President Lincoln, during the early part of the War of Secession, including his proclamation suspending the writ of *Habeas Corpus,* were subsequently legalised by Congress; but it is at least clear that Congress can make him, as it did make Lincoln, almost a dictator. And how much the war power may include appears in this, that by virtue of it and without any previous legislative sanction President Lincoln issued his Eman-

cipation Proclamations of 1862 and 1863, declaring all slaves in the insurgent states to be thenceforth free, although these states were deemed to be in point of law still members of the Union.

The language of Bryce on the president's power should be carefully studied. It brings into view a most important fact in the constitutional history of the United States. Americans have succeeded in creating at a time of national peril a dictatorship, but a dictatorship which has involved no real peril to the liberties of the country. Nor is it necessary for the attainment of this end to wait for the existence of civil war. It is perfectly clear that President Wilson has possessed since the beginning of the war with Germany a firmer and greater authority than has fallen at any time to any English prime minister. One may put the matter a little more strongly. President Wilson, though he could not technically declare war himself, could certainly, as we know by experience, determine whether war should or should not be declared, and fix, according to his own judgment, the date at which the United States should become the avowed enemy of the German Empire. Note too that Lincoln's authority was, and Wilson's authority is, simple, real, personal power, i.e. the decision of national affairs in accordance with his own will and judgment. At the moment when it was doubtful whether Lincoln would issue an Emanicipation Proclamation, or whether Wilson would join England and her Allies in the war against German despotism, the president could not practically have been compelled by any party, or even by the Houses of Congress, to take a step which he might think either premature or in itself impolitic. It is for this reason that when it was doubtful whether Wilson would determine whether America should take part in the war, it was said by some English writer that Mr. Wilson was at that moment "the most powerful ruler in the world." It is for this reason that the glory of having taken a decisive step in the destruction of slavery will always remain the personal glory of Lincoln, whilst the deserved fame of America having joined decisively in the war against German despotism will always be ascribed to the statesmanship of Wilson.

*Second.* The independence of the president within the sphere of his powers though it may have some disadvantages, not only increases the dignity of his office but also, what is of far more consequence, limits to a considerable extent the evil of party government, especially in a time of war. No doubt the

president is in the United States always elected by a party, though he may often owe a second tenure of office to the respect he has excited among men of all parties. But he continues when in office to a much less extent than does a prime minister to be the head of a party. A president when he has taken office is always recognised as being the representative of the nation. A prime minister however pure his patriotism, can hardly prevent, even when in office, his continuing to be, and still more his being held to be, the leader of a party. This difference of feeling may be ascribed to the fact that neither the Houses of Congress nor any party either in Congress or in the country can put an end to a president's authority as long as he keeps within the rights given him by law, that is by the Constitution as construed by the law courts.

*Third.* The power and the independence of the president involve of course some possible evil to the nation, but they possess a virtue which has hardly obtained sufficient recognition. They increase with an official of any worth or merit his sense of responsibility. One cannot doubt for a moment that in the case of Lincoln increase of power went on constantly increasing his sense of responsibility and his intense determination to perform to the full his duty to the nation and to God. The admiration and the reverence entertained for him, as at once the hero and the martyr of democracy, has rather restrained the recognition of the way in which the possession of power and of responsibility raised his character and developed his sense of public duty from the time when he first took an active part in public affairs to the day of his death. The matter well deserves consideration, for the history of his presidentship certainly suggests, what we may well believe, that, with men of any nobility and of statesmanlike foresight, security in the tenure of considerable power may also increase the sense of patriotism, and of the duty owing to a country by the chief and chosen representative of the nation.

### (C) *Is It Desirable to Introduce Any Characteristic of Presidential Government into the English Constitution?*

No Englishman wishes to change our Constitutional Monarchy into a Republic. The sole matter worth consideration is whether it might not be well, in time of warfare, to create a

dictatorial power such as that which has fallen under the Constitution of the United States to Abraham Lincoln and to President Wilson? No man but a very rash writer and thinker would venture dogmatically to reply to the inquiry before us. My whole object is to bring before my readers a few observations drawn from a comparison between cabinet government and presidential government, and suggested by the events of the war which has just, as we all hope, ended in a permanent peace.

Bagehot has made it perfectly clear that English cabinet government as it existed in his time had, in times of peace, immense advantages not possessed by presidential government in the United States. He possibly somewhat overrated the advantages to England, even in peaceful eras like his own, of the party government whereof the Cabinet is the outcome. He certainly a little exaggerated the weak points of presidential government. Bagehot clearly did not realize, what Bryce has made as clear as day, that when the American Commonwealth is disturbed either by foreign war or by civil war, the president becomes, or certainly may become, for all practical purposes a dictator. Lincoln, to use an expression of Bryce's, possessed greater power than any ruler of England since the time of Cromwell. President Wilson has exercised, and even now exercises, more independent power in the United States than does Lloyd George or than did Asquith in England. This is indisputable. Lincoln issued the Emancipation Proclamations at the time and in the terms which he chose. President Wilson at his own will, and no doubt in accordance with his own view of the course which it was expedient and right for the American Commonwealth to pursue, determined that for two years or more the United States should not take part in the greatest war which has been waged in the history of the world, and then, when in his judgment the moment for action had arisen, brought the United States into the war, and took care that when once they jointed England and her Allies they should throw into the war the whole of their energy, wealth, and valour. No one will dispute that Lincoln may have made grave mistakes in carrying out a noble policy, or that there may have been points in President Wilson's conduct during the war which opponents censured. But the existence of a presidential dictator has been admittedly in each case a benefit to the American Commonwealth.

When England declared war on Germany, on the 4th of August 1914, cabinet government was inevitably put upon its

trial. In declaring war the Cabinet did an act of bravery which must always be laid to its credit, and exactly expressed the conviction of the nation. If therefore the war tested the system of cabinet government, that form of executive was put to the test under very favourable circumstances. The nation, speaking broadly, was for all practical purposes unanimous in demanding a declaration of war. There was no large party hostile to a war against Germany possessing anything like the power of the Whigs who from 1789 onwards opposed the very idea, and the carrying on of war between England and France. Let it be remembered that as a body the Whigs were as hostile to a war against Bonaparte as they had been to a war against the French Republic. One must in fairness add that the Cabinets in power during the present war not only gained much from the absence of any powerful opposition to their war policy, but most legitimately gained a great deal more from the general sense that these ministries as a body, and with the exception of a very few of their members, completely shared the patriotic enthusiasm of the country in waging war with German despotism, and heartily desired that England should gain, as she has gained with the help of her Allies, a complete victory over foes who, though fanatics for German "culture," were the deadly enemies of true civilisation.

In spite of all these advantages, and in spite of a final triumph, the system of cabinet government did during the war, if I do not say break down, certainly exhibit its very weak side. Many and many were the persons, during the stress of the war, and the knowledge of failures—say at the time when England could not save Belgium or even protect Antwerp from a ruthless foe, or when Serbia was invaded and conquered by our enemies, or when British armies were forced to retreat from Gallipoli—who said "O that we could have a dictator." Then again the Government itself felt that a concentration of power foreign to the system of cabinet government was a necessity for the country. The coalition of hitherto adverse parties, the creation first of a War Council, and then of a War Cabinet, were in the main efforts of patriotism. But the War Cabinet, to take a perfectly clear case, was really inconsistent with the form of government eulogised by Bagehot. Add to all this that the working of parliamentary government since the beginning of the war has exhibited the inherent defect of cabinet government, namely its constant dependence for office upon the will

of Parliament, or rather of the House of Commons. Can anyone suppose that a good number of appointments which excited the blame of many of the public, and some things in the conduct of the war, as also the large size of the ministry outside the War Cabinet, were not due to the desire to conciliate, or not to offend, individuals or parties whose influence in Parliament might affect the existence of the Cabinet? It is the independence of the president which more than once has raised a president from a partisan into a leader of the nation. It is the dependence of the Cabinet on the will of the House of Commons, or even nowadays on the will of party organizations, which has sunk many a patriotic minister into the leader or the servant of a party. Add to this that, as already pointed out, cabinet government nowadays does not come up to the ideal attributed to it by Bagehot. The prime minister is now often not chosen by the House of Commons, but by the will of what is called the people, which may be in reality the will of well-organized factions. His Cabinet may be so put together as to ensure that each of discordant parties may have its own representative in the Government. A thinker such as Bryce, who expresses himself with care, thinks party government a necessary evil, but still an evil that should be checked. But many leaders seem to long for the day when the concord between opposite parties more or less established by war shall again flourish and abound in peace time. A private man may venture to say that the nation has come to loathe party cries.

The presidential dictatorship of America has not damaged the freedom of America. Is it absolutely impossible that the ingenuity and the patriotism of England may discover some constitutional arrangement which would give, say, during a time of war, to some leader of the nation the independence and the patriotic supremacy which have made the name of Lincoln as famous and as revered as that of Washington?

## LEGISLATIVE PROCEDURE IN TWO ANGLO-SAXON COUNTRIES[1]

It is curious and of more than ordinary interest to the student of national psychology to observe how intimate is the

[1] By A. Maurice Low, M.A. American Political Science Review. 8: sup.148-54. February, 1914.

intellectual relation existing between the two great branches of the English speaking race. The protest of the American member of Congress against legislative tryanny finds its echo in England. When the English member rebels against autocratic power he repeats in almost identical language the indignation of the American member. The woes of the Mother of Parliaments are the tribulations of her oldest daughter.

Alike in so many things that the family resemblance is unmistakable, with a common language, common traditions and common institutions to make the two peoples think and act the same, the impulse of thought in one country finds its reflex in the other up to a certain point, and then, not infrequently, there is a sharp divergence, which shows in marked degree the difference between the English and American temperament. Never was this more clearly seen than at the time I speak of.

In both countries it is recognized that government is carried on by party majority. Under the parliamentary systems of both countries there must be a majority in the lower house, that majority must be held to responsibility, and it must have the power to translate a legislative program into statute. It is to be assumed that when the country gives to a party a majority it is with the purpose to see the power of the majority made effective.

Now I shall not attempt to say that in England we are greater partisans than you are in America and that we make less attempt to conceal our partisanship, but the truth must be said that the outcry that was raised against "Cannonism" was largely the terror of cowardice—not the cowardice of the opponents of Cannonism, they at least had the courage of their imperfections—but the cowardice of its supporters, who apologized for being partisans and in a half hearted way attempted the always impossible task of being partisan and pretending to be non-partisan, while profiting by partisanship. In America the private member revolted and won; in England the private member protested and submitted to the system.

Seemingly, then, the advantage is with the American, but I am not at all sure that anything has been gained. The objection to Mr. Cannon and a system that was sanctioned by custom and tradition, was not that the speaker of the house of representatives had been unfair in his rulings, or had violated the parliamentary code, or had denied the minority rights that properly belonged to them, but that he attempted to carry out the wishes of a

majority of his party. He was charged with the crime of being a party man and executing the party policy. The agitation would not have reached the proportions it did had Mr. Cannon's party courageously met the issue and boldly announced that the machinery of the house must be in the hands of the Republicans so long as the Republicans were in a majority in the house. Instead of which it offered weak excuses. When an individual or a party attempts to defend itself by offering excuses it usually convicts itself of the accusation.

In England we know only one party—and that is the party of the majority. Theoretically the minority exists: so far as it is able to influence legislation it has no existence. We believe in a centralized government and one man power, and we put the whole party in the hands of a single man.

When the country has voted a party into power its leader becomes prime minister. He is not elected prime minister by a party vote or designated by a caucus. He does not seize leadership nor gain it as a result of a cabal. He comes to the premiership because he is recognized as the man better fitted than all others to captain his party, and usually he has served a long apprenticeship and given proof of his ability and qualifications. There is never, or at least very rarely, any doubt as to who will be premier when the opposition comes in. There is no opportunity for a surprise. The dark horse is unknown in the terminology of English politicians.

The government of England is in fiction the sovereign and the parliament, the lords spiritual and temporal, and the commons; actually it is the Cabinet. In the selection of his Cabinet the prime minister has the same freedom as the president of the United States, and both are governed by political considerations and expediency. But the prime minister has this advantage over the president. British cabinet ministers are always members of the House of Commons of long service and high standing, the prime minister knows them from having been intimately associated with them, and they know the house and its traditions and the members and their idiosyncrasies. It would be impossible for a member serving his first term in the house to be made a member of the Cabinet; and one cannot imagine a prime minister putting a stranger in his Cabinet, knowing him only casually by reputation, and meeting him for the first time when he made the tender of the portfolio, as has happened more than once under similar circumstances in American politics.

It is no doubt an advantage to the premier to know and thoroughly understand the men on whom he must rely, and it must, I am sure, result in closer team work.

The prime minister is an autocrat. The policy of the government is determined by the Cabinet, and the policy of the Cabinet is determined by the premier. When a member of the Cabinet disagrees with his chief the solution is resignation, but it is not the resignation of the prime minister. So long as the premier holds his majority in the house his power is absolute.

Experience has so often demonstrated the folly of divided responsibility that in England we long ago abandoned it in favor of centralized authority. A government in which no one man is supreme is in as great a danger from shipwreck as a vessel where every man may give orders and no one feels compelled to obey. The members of the majority party in the House of Commons are like the rank and file of an army, they are there to execute the orders given them, but not to be strategists on their own account or to experiment with their own tactical ideas. They are not consulted about legislation because it is taken for granted they will give their support to the legislative program of the government as outlined at the beginning of the session in the brief speech from the throne. A wise prime minister will of course endeavor to do nothing to antagonize his party, nor will he propose measures that do not have the full party support. If he does he risks defection and the loss of office.

Now while the system places very great power in the hands of the prime minister and the Cabinet it reduces the private member to very small proportions, and of course the private member is enormously in the majority, as the Cabinet usually consists of not more than a dozen men, the British Cabinet, I may add, being a flexible body and not as here unchangeable. No private member can introduce a bill by simply dropping it in a box at the clerk's desk so as to make his constituents believe he is the father of legislation; and no bill can be passed unless it is a government measure or has the sanction of the government. A private member, whether in the majority or in opposition, can make a speech under certain narrow restrictions, but he cannot speak simply to obstruct the legitimate work of the house. Closure—the guillotine as it is technically called—is freely used, and when time grows short and members talk solely for the purpose of delay the blade falls. The right is conceded to the government to manage the affairs of the house in

its own way. It is not necessary for me to go into details. It is sufficient to say that government business is given precedence and cannot be obstructed by non-official members or by the opposition. One has only to read rule 42 of the Manual of Procedure of the House of Commons to see how drastic this control is. Here is the rule:

Government Business has precedence at every sitting except the evening sittings on Tuesday and Wednesday and the sittings on Friday; after Easter government business has precedence at the evening sittings on Tuesday; after Whitsuntide, until Michaelmas, government business has precedence at all evening sittings, and at all Friday sittings except the sittings on the third and fourth Fridays after Wit Sunday.

Not much consideration, it will be seen, is given to the private member.

Compare this with the freedom of the American representatives. In the day when Cannonism flourished most luxuriantly there was a committee on rules, which, in a much restricted sense, corresponded to the "government" in England. The committee on rules, decided the measures to come before the house, the length of debate, and when the vote was to be taken. This committee consisted of five members, the speaker and two of his party colleagues and two members representing the opposition, all of them appointed by the speaker, who was the chairman of the committee. When the minority attempted to delay or obstruct a party measure the speaker and his two associates met in private and adopted a rule which prescribed the day and exact hour the vote should be taken. They then called in the minority members of the committee and submitted to them, as a matter of form, the rule which, as a matter of course, they opposed, but as they were in the minority their opposition was futile, and the rule was adopted by the committee. It was then laid before the house, and if it was approved by the majority, which it almost invariably was because it represented the sentiment of the majority, it was adopted and further obstruction was impossible. Whereupon the complaint was made by the minority that they had been robbed of their rights by an autocratic speaker, they had been deprived of free speech and given no opportunity to debate the bill.

Was there any justification for this complaint? I think not. I have already shown that not only is the opposition given no part in shaping legislation in the House of Commons but the

member of the majority party who is not in the government is afforded no greater opportunity. Republicans do not expect to be given representation in Democratic Cabinet so as to obstruct Democratic measures. Why should they? They are not held responsible for legislation. It is the majority on whom the odium must fall if their legislation is vicious or dishonest.

But the country clamored for reform, not that the country knew anything about the question or had any clear ideas on the subject, but what the country wants it generally gets, and the rules of the House of Representatives were reformed. On March 19, 1910, the house adopted a resolution abolishing the old committee on rules and substituting for it a new committee consisting of ten members, six of the majority and four of the minority (the committee has since been enlarged to eleven members) to be elected by the House instead of being appointed by the speaker, and declared the speaker ineligible for membership on the committee. Now observe what has happened. Instead of the speaker and his two colleagues meeting, the six majority members meet in private and after agreeing to a rule submit it to the four minority members of the committee. This is the triumph of reform. The rights of the minority have been won by substituting four-tenths for two-fifths! With such trumpery toys does reform distract that overgrown baby, the public.

In our efforts to protect the rights of the minority have we not become maudlin and allowed calm judgment to be subverted by sentiment? Have the minority any rights that a majority must respect? That may seem a startling proposition, and yet I advance it seriously. I do not of course mean rights in their broadest sense—life, liberty and the pursuit of happiness among other things—but I do mean the right of a minority to prevent a majority from exercising its legislative will. Power to legislate in a free country comes from the people, who by their choice expressed at the polls show their faith in one political party and express their disapproval of the other. This is a mandate to carry into effect certain policies that the majority have advocated and the minority have opposed. So long as this grant of authority is valid the sole responsibility rests with the majority. The people, it is to be presumed, have acted with deliberation and intelligence, their purpose has been to tie the hands of the minority, and for good or evil to render the mi-

nority impotent so long as the power of the majority remains unrevoked. This sovereign right of the people to determine the choice of its governors ought not to be nullified by technicalities or lax rules or cowardice pandering to the demagogue masquerading as the reformer.

It will no doubt be said if the minority has power neither to obstruct nor to threaten defeat the majority will grow arrogant, corrupt, indifferent to the public welfare, but those are fears imaginary rather than real. A party that is so stupid as to be dishonest, and so dishonest that it becomes stupid soon loses the confidence of the public. In this country the tenure of office is so brief that the people can always apply the remedy. If the people are content to keep a corrupt or inefficient majority in power they have only themselves to blame.

But as a matter of fact, the more you strengthen the majority and the greater the power of the minority is weakened, the more efficiency is increased. The more the dominant party as a whole, and every member constituting it, feels responsibility the greater will be the sense of party and individual obligation and the duty every man owes to render the highest service. The minority will always be a watchful critic. It will make speeches exposing the folly or wickedness of the majority. That is as it should be, and that is the only function of the minority. It should be an exasperation to the majority. It ought by constant irritation to make it more efficient. But no minority should possess the power to prevent a majority from legislating—wisely if it is a party governed by wisdom, or destroying itself by its own folly if it has not the wisdom to save itself from destruction.

## CONGRESS AND THE CABINET[1]

President Wilson's innovations regarding his relations with Congress and the new seating plan of the House of Representatives will probably give impetus to the movement to seat the Cabinet in House or Senate. If it is so easy for a tactful president to establish human and personal relations with Congress, why, it will be asked, should not the members of his Cabinet follow suit? Already they are entitled to seats on the floor of the Senate and House at times of ceremony. Why, then, should

[1] Nation. 96 : 380. April 17, 1913.

they not drop in regularly, and perhaps gradually begin to answer questions, even if the right to debate is for the present withheld? It all sounds so very simple, and suggests not only a saving of time but more of government in the open. Moreover, as Mr. Taft expressed himself in favor of the change just before leaving office, and it has been generally assumed that Mr. Wilson has favored this change ever since the appearance of his Congressional Government, we are sure to hear a good deal more about it in the near future.

The rearrangement of the House of Representatives somehow naturally suggests a "front bench" for ministers and one for the opposition leaders. For decades this reform has been urged, and now at last the desks are out, and with them go many excuses for inattention to the speakers, such as letter-writing, newspaper-reading, etc. The seats will not be so comfortable, and since it will not be as easy to immerse one's self in correspondence or other distracting matters, it is quite likely that the actual numerical attendance of Congressmen may for a time fall off. But a legislator who is a "dinner-bell" empties the benches in London, Berlin, and Paris as well. On the other hand, when important matters are up, it is quite possible that the standards of debating and speaking will improve. Time alone will show just what the effect of this innovation will be. If a new atmosphere is created and genuine debating becomes not the exception but the daily order, the desirability of having Cabinet officers at hand is likely to become more apparent.

The best argument for it is the one of government in the open. It is not to be denied that the Cabinet members are frequently in touch with Congress through the committees, before which the president may also appear, if he so desires. But committee-room hearings are very different from what would happen if the Cabinet were to appear upon the floor. It is plain that there can never be obtained the same publicity for what goes on in committee-rooms that is even now accorded to events on the floor of Senate or House. Frequently, vitally important statements of policy made by the secretaries to standing committees fail to attract the attention they deserve—usually, unless there is under consideration a matter of capital national importance. But it is the English custom of questioning ministers which particularly appeals; ridiculous as some of the questions asked in the Commons are, as a whole they serve the useful

purpose of smoking out the government. Anybody who recalls how difficult it was to obtain facts about what was going on in the Philippines during the war there, must see the point. And to pass a resolution of inquiry often avails little. The secretary inquired of may send back a batch of documents requiring endless labor to analyze, and sometimes confusing the issue; or he may decline all information on the ground that it is against public policy, when he would find it hard to show what the public policy was if he were compelled to explain on his feet under a cross-fire of criticism.

Mr. Wilson as governor desired a close relationship between executive and legislature because he felt that the governor was leader of his party and should have the right personally to advocate the passage of the legislation for the obtaining of which he asked the suffrages of the voters. The weak point in such a change is obviously the fact that the governor of a state is by no means always the leader of a party which has a majority in the Legislature. Take Massachusetts, for example; it has the habit of simultaneously electing Democratic governors and Republican Legislatures. This happens frequently elsewhere. The governor, if he had the right to enter a legislative debate, would find himself, under these circumstances, merely the leader of the opposition seeking to obtain for himself a majority by aid of outside opinion. Plainly, it is impossible to conceive of the English system of a responsible ministry being exactly duplicated in this country, for the governor is chosen for a fixed term, and cannot stand or fall with his legislative program. It is an adaptation of the English plan to our own which we can at most hope for, if, little by little, this appears desirable.

But a closer relationship between the executive and the legislature, as between the executive and the public, does seem desirable and probable. Mr. Hughes illustrated the power of the just governor who in righteous causes appeals to the public. Mr. Wilson in New Jersey had intended to go regularly to the various county seats and meet the voters face to face. The support given him by the voters of the state rendered this unnecessary, and besides his presidential candidacy intervened. He must ache to be back for a few weeks, and try once more the value of that direct personal appeal, now that his jury bill is defeated, just as he must have wished that he or Governor Fielder could have entered the New Jersey Senate before the close of the

session to advocate their bill on the floor and expose the influences which brought about its defeat. In the last analysis, the success of any *rapprochement* between executive and Legislature will depend on the character, ability, and manners of the executive. Where Mr. Wilson has succeeded another might make such moves appear ridiculous, or as the despotic attempt of an executive to aggrandize himself at the expense of a co-ordinate branch of the government.

## WANTED—A RESPONSIBLE GOVERNMENT [1]

Mr. Lansing's enforced retirement from the office of Secretary of State directs attention again to the anomalous position of the body commonly known as the Cabinet. Mr. Lansing was one of the federal officials whom the Constitution describes as "heads of departments." Like all of his associate heads, he was appointed by the president and confirmed, as a matter of course, by the Senate. His duty was to administer the business of the Department of State in accordance with the wishes of the president. Whatever he did was, from a constitutional point of view, the act of the president; he was, so to speak, the president acting in the particular field of foreign relations. For the general conduct of public business, on the other hand, or for the working out of what is familiarly spoken of as the policy of the administration, neither he nor his colleagues had either individual or collective responsibility. The president was free to consult him or not, as the president chose; whenever the president wished it, he might be dismissed. Mr. Lansing, like every other Cabinet officer, was a chief clerk, with only so much discretionary power as commonly attaches to such an office or as the president, from time to time, may have been disposed to accord to him.

How completely such a group of executive functionaries as Mr. Lansing and his colleagues have been differs from a ministry or Cabinet in the European sense must be apparent at a glance. Neither individually nor collectively is the Cabinet a responsible body. While its members, at least when appointed, are naturally persons who are politically in agreement with the president, they are not as a group the constitutional advisers of the president. The Constitution expressly provides that the

[1] Nation. 110 : 254-5. February 28, 1920.

president "may require the opinion, in writing, of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices"; but the president is under no obligation to consult such officers upon any other matter or as a body; nor is it, apparently, expected that they shall offer their advice unless it is called for. Nor is the Cabinet responsible to Congress. It does not necessarily represent the party which for the time being has a majority in either the House or the Senate, nor is its tenure of office affected by any change in the political complexion of Congress. It cannot urge any action upon Congress, because it has no policy; it cannot be criticized because, so far as the Constitution or the laws are concerned, it has no existence.

It is a fair question whether a system which so directly encourages all the evils of personal government and executive autocracy ought not, in the interest of a healthy political life, to be ended. None of the various changes in the system which have been proposed from time to time go below the surface. Seats in either house of Congress, for example, with the privilege of participation in debate, would not alter the constitutional status of the Cabinet in the least; nor would the Cabinet become a ministry if its members were elected by Congress or even by popular vote. The essence of cabinet government, in every country in which the system exists—and it exists in most self-governing countries except the United States and in South America—is the responsibility of the executive to the legislature; and so long as the heads of departments, sharing with the president the immense power which the Constitution gives to the executive, are in no way politically responsible to Congress for their acts save through the process of impeachment, we cannot have true cabinet or ministerial government in the United States.

It is time for the American people to think seriously about their Constitution. Whatever the virtues of the Constitution in other respects, the system of government which it provides is the most rigid now existing. Both the president and the Congress are elected for fixed terms. No matter what changes public opinion may undergo, the political complexion of the House of Representatives cannot be changed in less than two years nor that of the Senate in less than four. Between Congress and the president there is no necessary political harmony; at the present time there is no actual harmony whatever, and public business

is well-nigh at a standstill; yet the public, which suffers from the antagonism, cannot hope for even a partial remedy until after March 4, 1921. As for the president, his powers, largely uncontrolled and uncontrollable, are today greater than those of any sovereign or prime minister in the world. These things ought not so to be. If the social evils from which the country has long suffered are to be removed, if the ominous unrest which grows daily in volume and intensity is to be allayed, it can only be through the establishment of responsible government in place of the present outworn system.

## RESPONSIBLE LEADERSHIP AND RESPONSIBLE CRITICISM [1]

To show that our essential weakness is institutional let us remove ourselves from the realm of personal controversy. Let us go back to the Spanish-American War, when Mr. Roosevelt was in authority, first as Assistant Secretary of the Navy, later as a military commander giving orders at the front. At that time there was the same confusion and waste in raising and equipping a small army of two hundred thousand men that there has been during the last year in raising an army ten times as large.

To appreciate what happened at that time, let us read from one of the most matter-of-fact, painstaking writers of history. Showing the embarrassment under which the McKinley administration labored, Sargent says:

> Nearly everything had to be created; clothing, tentage, wagons, ambulances, arms—in fact everything in the way of uniform and equipment—had to be contracted for or manufactured. . . Wagons, ambulances and horses could not be purchased immediately in sufficient number; great difficulty was experienced in obtaining sufficient canvas to supply the army with tents; and no khaki cloth for uniforms was to be had in the United States. All this resulted, of course, in great inconvenience to the troops. The volunteers had to accept an inferior rifle with black powder; a number of regiments could obtain no tents; the entire army was short of transportation; and many soldiers had to go to the tropics and fight in winter clothing.

[1] By Frederick Cleveland, Secretary, Industrial Service and Equipment Company, Boston. Academy of Political Science. (New York). Proceedings. 8 : 29-41. July, 1918.

The confusion in Leadership was appalling—and what is more, profiteering had a suggestion of venality that today is almost wholly lacking. There was more of the spirit of gang loyalty and less of the spirit of individual devotion to a great national cause. There was more of the confusion and waste and wantonness of the Civil War. But this confusion of leadership and administration was not to be charged to lack of quality in President McKinley—not even to Mark Hanna.

Consider the kind of leadership we then had. On the supply side of the military establishment there were twelve different bureaus or offices, which had been created—not by the president as the responsible institutional military leader for his assistance and guidance—but established by Congress. Congress using its legislative powers had violated the spirit of the Constitution, which makes the president, as commander-in-chief of the army and navy, responsible to the people. And it set up against the president a bureaucratic feudalism; one lord was given jurisdiction over the buying and making of guns and ammunition—responsible to a committee of Congress; another over buying or making clothing and equipage and providing quarters—responsible to a committee of Congress; another bought food—responsible to a committee of Congress; another bought and dispensed medicine—responsible to a committee of Congress; and so on through the entire list.

These functionalized, bureaucratic, feudal lords did not look to their titular superior, the leader chosen by and responsible to the nation, for powers and policies. They looked to irresponsible committees. And because of the independence which was thus given, each chief built around himself a bureaucratic wall that even the constitutional chief executive himself could not get over or break through without wrecking limitations and provisos that had grown up in statute books as thick as moss on the shady side of a moat. In violation of the spirit of the Constitution, and of every ideal of democracy, Congress had taken upon itself control over each bureau of the administration. It had taken the initiative and the leadership that belonged to the executive in any scheme of responsible government and divided it among over a hundred different standing committees which, sitting behind closed doors, became both the real Congress and the real head of the administration. This was the institutional provision for leadership that existed at the time of the Spanish-

American War. And it still existed when we entered into this war against Prussianism—not alone in the national government, but in most of our state governments as well.

That we got out of the Spanish-American War without enormous sacrifice of blood and treasure, and loss of our national prestige, is due to the fact that a much less effective, moribund leadership had grown up in autocratic Spain. Consider what might have happened to Shafter's seventeen thousand men if the Spanish army of one hundred and ninety-six thousand men then in Cuba, more than twelve to one of the American forces landed, had been under the direction of a Foch, a Haig, or a Hindenburg. Shafter debarked his army without opposition, his only loss, caused by accident, being two men and a few mules, and the only difficulty experienced being his lack of debarkation facilities. So destitute was the army of means of landing that it was necessary to throw the mules and horses overboard and make them swim for shore. Although there had been ample time and opportunity for the Spanish generals to have brought their army into action between the 22d of June and the 1st of July, Spanish records show that they had only nine thousand in the vicinity of Santiago. The Spanish soldier proved a good fighter, but he lacked leadership. If he had had good leadership it is thought that it would have taken not less than a half million men and possibly two years to reduce the island of Cuba. Judged by results at the Battle of El Caney, this seems a conservative estimate. The only reason for our early success in the Spanish-American War was that the enemy was worse off for leadership than we were. Victory came to us by default. But we can look forward to no defaults under Prussian leadership.

Let us follow the Spanish-American War experience a little further, for it is helpful. Let us follow it into the administration of Mr. Roosevelt, who saw and felt the lack of unity of direction and control. As illustrative, let us consider the futility of Mr. Roosevelt's effort to put unity of direction and control into the military establishment—due to a popular appreciation of the need. The enormous cost of the Cuban campaign, short though it was, the confusion and waste on every side, was the reason urged by Mr. Root in 1903 for organizing the General Staff.

Yielding to this influence, an Act of Congress was placed on the statute books. This did not break down bureaucratic walls.

Even with Mr. Roosevelt as constitutional Commander-in-chief and Mr. Root as Secretary of War, these old bureaucratic, feudal monopolies were protected by Congress as true representatives of our old *laissez faire* philosophy of government. These were so firmly intrenched that it took fifteen years and then several months of confusion in preparation for a war which left no doubt in the minds of the people and their representatives that the military powers must be placed under strong, centralized leadership, before the General Staff was permitted to function effectively.

Mr. Taft felt the same handicap, and through his entire administration he endeavored to have the principle of executive leadership accepted in matters of administration and finance—making the representative body a court of inquest, with powers to enforce its conclusions through its constitutional right to control the purse. The futility of this effort is shown in the treatment accorded to his recommendation of an executive budget procedure. The idea was featured in the press and favored editorially. Only two newspapers opposed it. In a referendum taken by the Chamber of Commerce of the United States, only one trade body voted against it. But what was not seen or understood was that although it would require no constitutional change, as was set forth by the president in his message, it would require a complete change of procedure. Instead of having the machinery of Congress so geared up that the initiative in matters of administration and finance could be divided among over a hundred irresponsible committees, it must come from a responsible executive, the administration itself—leaving Congress free to review, criticize, discuss and finally to approve or disapprove the acts and proposals of those whose duty it was to render public service. Mr. Taft proposed that the president and the Cabinet should take the initiative and then stand the test of open public questioning, criticism, and discussion before Congress, thereby making the president and his Cabinet responsible for every measure which they considered essential to the adjustment of the working machine. This done, Congress would be free to hold the executive to account.

Since this was a frontal attack on the system of "government-by-congressional-committee," and the intrenched bureaucratic autocracy that had grown up under it (a system that had been inducted with the consent and approval of the people for

the purpose of making the executive weak), Congress assumed that the country would not support the proposition to give the initiative to the Cabinet, while Congress made it responsible through their power to control the purse. The Constitution admitted of such a practice. But opposed to it was more potent habit—a habit which could not be changed without mandate from the people.

The recommendations of President Taft for the introduction of an executive budget procedure were received by members of Congress with an air of patronizing superiority. When President Taft showed the seriousness of his purpose by issuing an order to the members of his Cabinet to prepare such a budget, a clause was injected as a "rider" on a deferred appropriation bill passed in August 1912, the intention of which was to prohibit it. This "rider" was slipped into the bill in the committee room, and so deftly was it done that few members of Congress knew that they were voting for a proposal aimed to prevent the president from doing what he claimed to have a constitutional right to do.

President Taft, however, did not falter. He issued a letter to Mr. McVeagh, as Secretary of the Treasury, stating that this rider could have no force as against the constitutional right of the president. Then he asked the Cabinet to proceed to make a budget as requested. After various interferences and delays, due to the attitude taken by congressional committees, a budget was submitted. It was promptly consigned to a pigeon-hole in the thought that it would be lost sight of. It was published, however, at the expense of the president's appropriation, and has been at work every day since—out in the back country among the people. So firmly has it taken hold on the minds of thinking men that it promptly became an issue in every state in the Union, over forty of them having passed laws relating to it. Furthermore, in the last presidential campaign, it found expression in the platform of each of the leading political parties.

In all these laws, however, this thought has failed to take hold: that a budget is only a procedure for holding an executive responsible by forcing him to come forward, tell what he has done and for what he asks support in the future; that there can be no such thing as a budget so long as the initiative in matters of finance and administration is in one or more legislative committees. All that the people can hope to get is a com-

mittee report, after practically all the decisions have been made, with little or no opportunity given for inquiry, criticism and discussion which will reach the people. What is called a "legislative budget," as has been shown in the state of New York, is simply a more orderly way of conducting "invisible government."

President Taft strongly urged also that the executive be permitted so to organize the administrative offices and bureaus as to enable him to discharge his responsibility to the public—to carry on the business of the government with a minimum of waste. But it was not until the life of the nation hung in the balance, and every human and material resource was plainly needful to turn the scales in its favor, that the idea that national economy and governmental efficiency were desirable began to be taken seriously.

Mr. Wilson has done much to prepare the way for responsible leadership. He was one of the first American writers to point to the fact that practically all initiative had been taken over by standing committees of Congress, thereby leaving the executive a negative force. As governor of New Jersey he stood for executive leadership. When he became president he upset the traditions of a hundred years by appearing personally before Congress to discharge his constitutional duty of addressing them on the state of the Union. And when it became apparent that the committee system must be abolished to enable the executive to give unity of direction to the army commissions, bureaus and offices which were required to cooperate in the prosecution of the war, he assumed personal responsibility for the Overman Bill giving to the president the power to reorganize the machinery of administration.

This power was finally given, as a war necessity. The bill was passed. But note the reservation. It was passed with an apology and a promise that after the war is over Congress will again take the initiative out of the hands of the executive and replace it in the hands of a hundred or more irresponsible committees of the representative branch. With all the appeals which have been made to the public, with all that has been said about the necessity for national economy, there are still Americans who insist that inefficiency and waste are the price to be paid for democracy—that we must choose between this and autocracy. If this conclusion is accepted as a principle for future action,

the days of American democracy are numbered. That weakness and waste are not essentials of democracy, France has amply proved. France has proved that democracy can be strong. Great Britain has proved that popular control over political leadership is not incompatible with strength.

This brings us to our second point of institutional weakness. Strong, responsible leadership, as a means of developing an efficient public service, is not the only part of the mechanics of democracy to which attention should be given in this time of war stress. Wastefulness is not necessarily a fatal national vice. Except when confronted by threatened invasion, we may still be slothful and survive. We may even continue to feel superior about it so long as brave France and efficient Japan stand as buffers on either side of us against the spread of Prussian aggression by land, and Great Britain spreads its protecting wings over the seas. What must prove our fatal institutional weakness, unless it is overcome, is irresponsible criticism and publicity.

When Congress gave over to its committees the initiative in matters of finance and administration, it unfitted itself to act as an independent forum. It introduced what has come to be known as invisible government—leaving to the people only irresponsible agencies through which to keep informed. Unless we provide the means whereby public opinion may have accurate knowledge of the facts and conditions which must be taken into account in determining whether one measure or another, or one leader or another, shall be supported; unless the electorate, as a jury before whom public administrations are tried, can act on evidence instead of mere allegation and persiflage, on material facts instead of demagogical appeals to prejudice and popular passion—our democracy will rest on no firmer a foundation than does the democracy of Russia.

When an accusation is made that a public officer has been inefficient in management of a public trust, and wasteful of public funds, this is quite as much to be considered a charge of "infamous" crime against democracy and against the state as information and complaint of injury to private property. The state is quite as much interested in any act or proposal of an authorized executive which bears on a matter of public policy as it is in the properties or interests of individuals. If a person accused of doing injury to life or property is entitled to the

protection of "indictment by a grand jury," "the right of speedy and public trial by an impartial jury," "the right to be informed of the nature and cause of the accusation," "to have compulsory process in his favor," and "to have the assistance of counsel" before he can be marked by the public press for popular disfavor and penal discipline, even greater is the need for a procedure which will give to the people and their servants protection from false accusations of the designing and the selfish.

It was the fair intent of our Constitution that the representative branch should be a court of political justice. Massachusetts still calls her representative branch her general court. What we have lacked is not an agency of political justice, but a procedure which will keep the representative body as a grand jury from becoming a party in interest. By permitting Congress to take the initiative we have consented to making it unfit. We have deprived ourselves of the means of independent inquiry with the benefits of counsel. This, and a public consciousness that when accusation is made against a public officer the life of the state and its material interests are being threatened, lie at the foundation of democratic control. Any charge made against persons chosen for positions of public trust is a matter which should be brought before a responsible tribunal. This is not a matter to be bandied about by scandal-mongers and irresponsible persons, and given currency under assumptions of constitutional guarantees of the right of "free speech and free press."

When we have adequate means for inquiry, discussion, criticism and publicity in a duly constituted court of political inquest, before the bar of which those who are responsible for executive leadership are required to come and give a full account of themselves; when this court has the power to enforce its judgments by control over the purse, subject only to an appeal to the electorate, we need not fear. Without such a court of political justice, "free speech" and "free press" may be quite as much a menace as a means of protecting our liberties. In fact, no one can be free who is at once ignorant and unjust. Under our present institutions we have no way of knowing whether our information comes from a "free press" or is only an "equity of redemption" that is speaking to us through editorial and news columns.

To make this point quite clear, let us picture Mr. Wilson, through his Cabinet, exercising the powers recently given under

the Overman Act, reorganizing our national bureaucracy so that we may develop the full strength of our manhood and the most economic use of our great national resources for winning the war. This will necessarily take time, but he makes a vigorous beginning—and December next he comes before Congress for more money.

Let us picture Congress doing its part as a court of inquest, a jury made up of representatives of the people. As such they organize, so that they may find out whether Mr. Wilson's Cabinet is composed of men who are to be trusted as executives in this great emergency. They organize by appointing an auditor-general with an adequate critical staff, to review, approve or disapprove each business act of the administration currently; and to report independently to Congress. They create a joint recess committee on finance and administration, whose membership is made up of the most competent critics in matters of this kind, and whose chairman is selected by those who do not agree with Mr. Wilson in matters of policy—the opposition. Senator Chamberlain heads the committee, which proceeds at once to prepare for the next session. Then Congress adopts a procedure which requires that the budget and all other measures proposed by the president and his Cabinet shall first be taken up in a joint Committee of the Whole, with the Cabinet present to explain, discuss and defend. In order that there shall be a real trial, a real inquest, in order that fullest discussion and publicity be given under constitutional guarantees of "free speech" and "free press," they provide that the opposition may be permitted to select special counsel for leadership in the Committee of the Whole, in addition to the regular party whip. To persons selected as counsel are given such powers before the committee as will enable them to manage the case of the opposition against the administration before the Committee of the Whole sitting as a jury.

The Cabinet has been preparing its case for weeks before Congress meets and the request for more funds is made. The members of the Cabinet have kept in touch with what has been going on—having in mind that they will be called before the bar of the House. They have met together and in confidence decided what "the administration" will stand for as a matter of public policy. They have organized their leadership, both in the Cabinet and on the floor. They are ready to explain and defend every act and proposal.

The opposition is also ready. The recess Committee on Financial Administration under opposition leadership, with power to subpoena witnesses and documents, assisted by the auditor general's staff organization, has become familiar with every act, with each item in the bill of particulars before it, and with the methods used by the administration in estimating future needs. It has prepared a report on aircraft construction; on shipbuilding; on purchasing equipment and supplies. Opposition leaders have become familiar with this and with the report of the auditor general.

Congress meets, and the opposition select Mr. Roosevelt, Mr. Taft and Mr. Hughes as special counsel. Two or three weeks are given to counsel for the opposition to study their case and arrange the strategy of the inquest, so as to bring every fact and reason opposed to the plan of finance as proposed. They are also given a chance to request the preparation of any further statements of fact needed by the opposition.

The day of trial comes; the press tables are crowded; the galleries are full; Mr. McAdoo presents the application for funds in a budget speech. After he has finished, Mr. Roosevelt rises and interposes a demurrer—he moves "that the committee rise and report against the application of the administration for more funds." He argues "that this action be taken without going into their plans for the future in detail, for the reason that the Cabinet cannot be trusted; that it has been weak and wasteful in time of great national stress; and that it is now trying to muzzle the press to cover up its mistakes of omission and commission."

The effect of this procedure on the country is electric. In case the motion prevails, there will be no other recourse than for President Wilson to reorganize his Cabinet—to appoint persons who together will command the support of a majority. The proceedings of Congress at once have a news value as great as a cable from Pershing of a threatened break in the Western front; and the public is not reduced to reading the attacks of irresponsible persons on the administration.

If, after the hearing on Mr. Roosevelt's motion, it is denied, then follows the review and consideration of the administration program. The budget is taken up line by line, and an informal vote is taken on each department. This new organization and procedure puts an end to "invisible government." It puts an

end to irresponsible criticism and publicity. It enables the executive to develop strong leadership, and through giving to the people and their representatives the benefit of inquest, criticism and decision by a responsible representative deliberative body it makes strong leadership subservient to the will of a majority.

This is a popular rendition of what happened in 1866, when Mr. Gladstone, responsible for the administration of the affairs of Great Britain, with a view to keeping a majority back of him and protecting himself and his Cabinet against irresponsible criticism, obtained the passage of a law by Parliament setting up just such an organization and procedure. His view was that the best way to meet opposition was to force it out into the open; to give it the fullest opportunity to know the facts and to present them in a duly constituted forum of the people.

Every country which has "responsible, visible" government has adopted a procedure for making its representative body a court of inquest for the people. We Americans first weakened our executive, then deprived ourselves of a means of responsible criticism. We violated the principle of separation of powers, by taking the initiative in matters of finance and in matters of administration from the executive and turning it over to Congress. Congress and our state representative bodies, using the same method, have done the natural thing—instead of performing the functions of a court or inquest, they have applied "gag rule." We wittingly deprived our administrations of unity of plan and action. We unwittingly deprived ourselves of the means of responsible inquiry and criticism, thereby making the people distrustful of all our public servants—ready to listen to any person who has the wit to commercialize attacks made on those who have risen to positions of trust and whose names have news value. The more unscrupulous the person making the attack under our system, the greater the personal advantage.

## THE HOUSE OF COMMONS OF TODAY[1]

In spite of all its adherence to old phrases and old customs, the Mother of Parliaments is still the most efficient. Its wonderful adaptability is evidenced by its never-failing success in fitting ancient forms to meet modern needs. Notwithstanding

[1] By Gerald B. Hurst. Nineteenth Century. 89 : 37-45. January, 1921.

a cumbrous method of procedure, its output of laws is prodigious, if not too prodigious. The cabinet system reconciles the sovereignty of Parliament with the maintenance of the executive powers, once enjoyed by the Crown, but now delegated to ministers, more effectually than any other known constitutional expedient. No statute is legally more fundamental than any other; so that a change in public opinion, however sudden and however revolutionary, can be mirrored in the Statute Book with unequalled speed. No other state possesses so elastic a constitution. Men and newspapers may criticise the government and the House of Commons with all their customary vigour, but not one in a thousand would wish to substitute "direct action" for so complete a democracy. Whenever parliamentary rule has been challenged in recent times by anarchical bodies like the Council of Action or the Sinn Fein organisation, or by any other plotters against social order, the bulk of the nation has stood whole-heartedly by the Constitution.

The best test of a political machine is its actual working. The glory of the House of Commons is to have responded to this test throughout its history. In every age it has stood first in the world for its genius in harmonising time-honoured customs with the demands of successive ages and advancing civilisation. Its fame is founded on its practice, not on its logic; and it is thus typically English. Other assemblies are housed in rooms which are adequate for their numbers, which are circular in shape, and which are furnished with appropriate desks. Ours finds sitting accommodation for barely half its personnel in a chamber of an inconveniently oblong shape, and with no ledge for ink or for papers in front of members. Yet it outshines every other in dignity and tolerance. We may enjoy no desks; but, on the other hand, we throw no inkpots.

There is a common belief, much encouraged by the press, that the House of Commons fails to exercise proper control over the executive. It is quite true that the private member has little scope for his own initiative, owing to the absorption of the time of the House by government business. If the coalition leaders will only promise the people at the next general election to pass fewer laws in the future he may again come into his own. For the moment the pressure of government bills is overpowering. The private member's right to ballot for months and private bills in the early part of a session is a minute and elusive privi-

lege. Questions to ministers, although no doubt they serve a purpose, are usually sterile. On many large questions of diplomacy and finance parliamentary supervision is reduced to vanishing point. The argument, however, may well be carried too far. The majority of the House still retain the ultimate power of refusing to vote supply or to pass the Army (Annual) Bill, and a coalition ministry would be the last to flout its opinions. The Commons in fact have a real influence on every issue, for a minister will rarely combat what is called the sense of the House; no man has ever gauged it better than Mr. Bonar Law. In committee, moreover, the process of obstruction is still a frequent expedient. In the hands of a tiny group of reactionaries it killed the Plumage Bill. In the hands of another group it emasculated the Ministery of Health (Miscellaneous Provisions) Bill. If Mr. Lloyd George seems all-powerful, it is merely because he is still regarded as first in peace as in war, and on essential issues he has a united country at his back. Millions of Frenchmen once styled Napoleon simply "l'homme." When Englishmen talk today of "the government" they generally mean Mr. Lloyd George. That is his strength.

The most interesting thing about the House of Commons is that the tone and temper of its members reflect with amazing precision the attributes of the nation whom they serve. The franchise is now almost universal. Representation was never so local. The carpet-bagger was never so little in request. When a visitor looks round the crowded benches on a great night in the House he is consequently looking at true types of the Britain which emerged victoriously in 1918 from the long stress and agony of war. Mr. Asquith has complained that they are mainly middle-aged. The electorate which condemned him for his neglect of the fighting man was also middle-aged.

It may be that there is little genius in the House, but this is because war-time Britain was much richer in courage and endurance than in genius. A would-be wit has tried to cry down the ministry to applying to them Disraeli's famous gibe against "extinct volcanoes." The plagiarism is absurd. They are not at all extinct. They never were volcanoes. Almost alone the prime minister has the demonic touch. The others are mainly very capable men of business or experienced administrators. They are, in fact, of just that cast of mind which English people have always preferred to see in authority. Disraeli said

"In England a great man is generally the dullest." No one would dream of describing Mr. Churchill or Sir Hamar Greenwood as dull, but most of the other ministers are trusted rather for their prudence than their brilliancy. It is the common English preference for men of judgment, and in some form characterises every class. Thus the Labour Party fails to return its abler champions to Parliament. A cynic might say that the public, if they are to have Labour members at all, prefers to have them stupid.

## CABINET GOVERNMENT IN FRANCE[1]

If Cabinet changes in France meant what they do in England, parliamentary government would have long ago broken down. But they do not; on the contrary, a careful study of the parliamentary history of the country will show that the great majority of ministerial changes have worked little or no interruption in the general policies of the government. Sometimes, indeed, they have produced greater efficiency in the carrying out of existing policies, as when Cabinets have resigned in consequence of internal dissensions and were reorganized in such a way as to secure the added strength that comes from harmony and concert of opinion. In a certain sense, the actual working of the French government has been characterized by a remarkable degree of stability and continuity of policy. In reality, the same political party (the radical bloc) has governed the republic for the last twelve years; during this period there have been many Cabinet changes, but no change of party, no swinging of the pendulum from conservatism to extreme radicalism, as has happened in England and other countries.

Those who, like Mr. Bodley, see in the French parliamentary system nothing but instability, incapacity and anarchy, do not get below the surface; they ignore the true test of governmental efficiency, namely, the results actually achieved. Judged by this standard, the French government has not failed. It maintains order today quite as effectively as the English government does; it administers justice and punishes crime with more dispatch than is done by most American state governments, and the out-

[1] By James W. Garner. American Political Science Review. 8 : 353-74. August, 1914.

put of legislation enacted by it in recent years in the interest of social reform has been very note-worthy and will compare favorably with that of any other European country.

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It is now well understood that hereditary monarchy is not at all necessary to the maintenance of the cabinet system. The experience of France proves that an elected president may readily take the place of the monarch in that system. The American government could be transformed into a cabinet government by fusing together the executive and the legislative and still remain a republic. In that case the president would cease to be the responsible executive, but would remain the dignified and apparent head of the state, and would become the coordinator and adjuster of the governmental powers.—*Jesse Macy, and John Walter Gannaway. Comparative Free Government. p.* 401. *Macmillan. New York.* 1915.

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I have long believed that the official relations between the executive and Congress should be more open and direct. They are now conducted by correspondence with the presiding officers of the two houses, by consultation with committees, or by private interviews with individual members. This frequently leads to misunderstandings, and may lead to corrupt combinations. It would be far better for both departments if the members of the Cabinet were permitted to sit in Congress and participate in the debates on measures relating to their several departments, but, of course, without a vote. This would tend to secure the ablest men for the chief executive offices, it would bring the policy of the administration into the fullest publicity by giving both parties ample opportunity for criticism and defense—*James A. Garfield. In P. S. Reinsch, Readings on American Federal Government. p.* 48.

## MINISTERIAL RESPONSIBILITY AND THE CONSTITUTION [1]

It is not my intention, in this article, to discuss the relative merits of the English and American forms of government, but merely to attempt to show that a responsible ministry cannot be

[1] By Abbott Lawrence Lowell. Atlantic Monthly. p. 180-93. February, 1886.

grafted into our institutions without entirely changing their nature, and destroying those features of our government which we have been in the habit of contemplating with the most pride.

The essential characteristic of a parliamentary government consists in the fact that the ministry (a body comprising all those members of the executive department on whom the policy of the administration depends) can remain in office only so long as it receives the support of the legislature. The members of the ministry have seats in the legislature, and they are expected to superintend its work, and to prepare such bills as they think ought to be enacted. But it is not for the performance of these duties alone that they are responsible. They are liable to be turned out of office if the legislature disapproves of their conduct in matters purely administrative. The late Gladstone ministry, for example, was no less responsible to the House of Commons for sending Lord Wolseley up the Nile than it was for introducing the Franchise Bill, and a vote censuring its policy in the Soudan campaign would have caused its resignation no less certainly than a defeat on the question of extending the suffrage. The legislature is made familiar with the policy of the ministry in legislative matters by the bills it introduces, but it can also obtain as much information about matters of administration as it desires by means of questions addressed to the ministers. It is evident, therefore, that the supervision which the legislature exercises over the details of administration is limited only by the temper of the legislature itself, or, in fact, by the intelligence, energy, and strength of the opposition. The legislature has complete power of control over all matters, both legislative and executive, but so long as the ministry retains the support of the legislature all the powers of government are virtually entrusted to its care. In the words of Bagehot, the Cabinet "is a board of control chosen by the legislature, out of persons whom it trusts and knows, to rule the nation;" and this, in the opinion of John Stuart Mill, is the most perfect form of government.

Now let us suppose such a system to be introduced into the United States, and let us try to discover what effect it would produce upon our institutions. I shall, however, confine the inquiry to the federal government, for the results in the states would be very similar.

The first matter to be considered is the position the president would occupy if an amendment to the Constitution were to provide that the executive officers should be responsible to Congress; and let us suppose, to begin with, that the president himself is given a seat in one of the houses. If, in such a case, the president were a man of sufficient ability and force of character, he might become the leader of Congress, and he would then occupy a position essentially the same as that of the premier in England. He would be, in fact, his own prime minister. This was the situation of M. Thiers when president of the French republic, for he refused to allow his advisers to form a ministry, and held himself personally responsible for the acts of his government. But no matter how great the president might be, such a state of things could last only so long as Congress continued to be of his own party. The moment a Congress of the opposite party was elected he would be obliged either to resign, or to give up all exercise of power, and surrender the government into the hands of some one who could obtain the support of Congress; because, by the very definition of a responsible ministry, no one can continue at the head of the administration whose policy has been condemned by the legislature. Experience, indeed, shows us how rarely it would happen that the president elected by the people would be able personally to lead the Congress. If he were not able to do this, the real leader of Congress and head of the government would be some other member of the administration; and in that case the president would have no more actual power than if he had no seat in Congress, and were not a party of the ministry at all.

But, in fact, no one proposes that the president shall be a responsible prime minister, or have a seat in Congress. The advocates of a parliamentary government go no further than to propose that the advisers of the president shall have seats in Congress, and that they alone shall be responsible to it for their actions. Under such a system the president would remain in office for the four years of his term, in any event, while the cabinet officers would retain their places only so long as Congress was willing to allow them to do so. The president would then be obliged to select his Cabinet from among the leaders of Congress, for otherwise the administration would be without strength, and in danger of being upset whenever the men who

really led the Congress should conclude that they wanted cabinet positions for themselves. Now it is evident that cabinet officers, who know that they cannot be dismissed without the consent of Congress, and who are at the same time the leaders of Congress and able to control its actions, will find it very easy to carry out their own policy of administration without much regard to the wishes of the president. They are called upon, moreover, to explain and defend before Congress the policy of the government, and they cannot do this unless that policy is really their own. They would make but a sorry piece of work in defending the acts of the president unless they really approved of those acts, and were willing to assume complete responsibility for them They clearly could not shield themselves by pleading the orders of the president, because his orders would not be binding on Congress, and such a defense would not prevent Congress from turning the Cabinet out, and insisting on ministry which would fulfill its wishes. Of course the responsibility of the Cabinet to Congress would not make the president a figure-head at once. George III exercised an immense influence over the House of Commons long after the principle of a responsible ministry had become a part of the British Constitution, and in a less degree we should see the same thing here. The tradition of the president's authority would probably enable him to influence politics for a long time, but as Congress became more and more conscious of its power it would follow more and more closely the acts of the administration. It would gradually force the cabinet officers to be strictly responsible to itself, and finally it would concentrate all powers, both legislative and executive, in its own hands. So long as Congress and the president were of the same political party the process would probably go on slowly; but it is clear that if a Congress of a party hostile to the president were elected he would immediately lose all control of the administration, which would pass into the hands of his political opponents. Mr. Bagehot, while discussing the separation of the legislative and executive powers in this country, and the exclusion of our cabinet officers from seats in Congress, remarks, "And, to the effectual maintenance of such a separation, the exclusion of the president's ministers from the legislature is essential. If they are not excluded, they become the executive, they eclipse the president himself. A legislative chamber is greedy and covetous; it acquires as much, it concedes as little, as

possible. The passions of its members are its rulers; the law-making faculty, the most comprehensive of imperial faculties, is its instrument; it will *take* administration, if it can take it. Tried by their own aims, the founders of the United States were wise in excluding the ministers from Congress." In those countries in which a parliamentary government has been introduced, the nominal head of the administration has lost all political power, and this must, in the nature of things, always take place. Germany, it is true, presents a striking exception to this rule, for there, by means of the vast personal force of Prince Bismarck, the emperor has been enabled to keep a strong hold on the reins of government; but no one can suppose that Bismarck himself would have been able to treat the Congress of the United States as he has treated the German Reichstag, and even in Germany he has done no more than put off the day he so much dreads, because it will not be possible for his successors to follow in his footsteps in this matter.

After considering the position the president would occupy if we had a responsible ministry, we are naturally led to inquire what changes such a system of government would produce upon Congress. That body is now composed of two branches, each of which has not only a constitutional right to refuse to enact laws proposed by the other, but has no hesitation in actually exercising its authority. Mr. Bagehot, a strong advocate of parliamentary government, considers such a state of things exceedingly pernicious, while, on the other hand, the publicists of the last century and most Americans at the present day assert that it is very important, if not absolutely necessary, as a check upon popular impulse. Let us inquire whether the existence of two really independent houses of Congress is possible in a parliamentary government. The Cabinet is to be responsible. Responsible to whom? To the two houses of Congress. This is all very well so long as the houses are of one mind; but what will happen when they disagree? Suppose, for example, that the House of Representatives should continue to support the Cabinet while the Senate opposed it, and that the Cabinet refused to resign. The Senate would then have but two courses open to it: either to hamper the policy of the administration in every possible way, and attempt to force the hands of the Cabinet and the House, or to submit; and if it should submit, it would fall in prestige, and gradually lose all voice in the control of the admin-

istration. When, in such a case, the majorities of the House of Representatives and of the Senate do not belong to radically different parties, a compromise may be arranged, it is true: but if this arrangement is really a compromise, and not a virtual surrender on the part of one of the houses, the Cabinet will be weak and its policy negative; or should it happen that the Cabinet is vigorous and composed of able men, it will play off each of the houses against the other, and be in reality responsible to neither of them. A ministry cannot be responsible to two chambers. In the long run it must depend upon the support of the stronger one alone, and disregard the action of the weaker. And this becomes more clear when we consider that one of the most important duties of a responsible ministry is to explain and defend its policy in the chambers. But the ministry cannot really defend its policy in both chambers, for the debates that take place in one cannot be repeated in the other, nor will a part of the debates take place in one and a part in the other. All the important discussions will tend to occur in the chamber which shows the most power, and the chamber in which the debates take place will have the most attraction for men of talent and ambition; and so the stronger chamber will grow stronger, and the weaker will become weaker, until all authority is centered in the former. Mr. Bagehot's description of the position of the House of Lords must in time apply to the second chamber in any country, where the principal chamber is not so torn by factions as to be unable to maintain a definite policy of its own. "Since the Reform Act," he says, "the House of Lords has become a revising and suspending House. It can alter bills; it can reject bills on which the House of Commons is not yet thoroughly in earnest—upon which the nation is not yet determined. Their veto is a sort of hypothetical veto."

The French Senate appears to be an exception, for it has a very considerable amount of power, and it sometimes happens that it is not afraid to defeat the policy of the Chamber of Deputies. The most extraordinary example of this occurred in 1883, when the premier, M. Duclerk, resigned, because he could not approve of a bill for the expulsion of the Orleans Princes, which was supported by a majority of the committee of the Chamber of Deputies and by most of the members of his own Cabinet. M. Falliéres formed a ministry, and the bill was immediately passed by the Chamber of Deputies; two weeks later, however, it was defeated in the Senate, and M. Fallières resigned.

M. Ferry succeeded him, and managed to deprive the Princes of their commands in the army under the provisions of an existing statute, but the Chamber of Deputies made no attempt to insist upon its policy of expulsion. Thus within three weeks two prime ministers were wrecked by the same bill: the first by the Chamber of Deputies which supported the bill, and the second by the Senate which refused to pass it. Now this was possible only because the majority of the Chamber of Deputies, although agreed upon the bill in question, was not sufficiently united to be really in earnest in the support of the ministry. The Chamber is, in fact, so split up into factions that a compact majority is impossible, and a committee system unsuited to a parliamentary government tends to increase the difficulty, so that every ministry is the result of a sort of coalition. The Chamber tolerates, but never supports, the ministers; and this is the cause not only of the weakness of the ministries and their uncertain hold of office, but also of the power which the Senate has been able to retain.

In a parliamentary government the power of dissolving the legislature is almost essential to the smooth working of the system, because a minister who feels that the people are on his side when he loses the support of the house cannot be made properly responsible to the latter. The ministry looks to the house for support, but in order that the system may work well both must feel that their policy is in harmony with the will of the people, because the people are the final judges of the policy of the government, and an election, whether it takes place upon a sudden dissolution or at the expiration of a fixed time, is an appeal to their judgment. Now in regard to the two branches of Congress, there can be no doubt which one would overshadow the other and become the center of power. Every two years, according to the Constitution, the entire House of Representatives is elected, and there assembles at Washington a new house in sympathy with the opinions of the people: if, therefore, we had a responsible ministry, the people, in electing the house, would pass judgment biennially upon the acts of the ministry. But only one-third of the Senate is renewed within the same period. The Senate, therefore, is never a very accurate index of the opinions of its constituents, and a reelection of a third of the Senators could hardly be looked upon as a verdict upon the acts of a responsible ministry; and even if the Cabinet were given power to dissolve entirely both branches of Cong-

ress, the two houses would not stand upon an equality, because the election of the House of Representatives would indicate the opinion of the people, while the new Senate would represent only the states; and there can be no question that the will of the people, and not that of the states, would be the decisive matter. The Senate, indeed, represents the people indirectly; but while the House represents the present wishes of the people, the Senate may be said to represent its more deep-rooted and lasting opinions. It is partly to this quality that the Senate owes its power and its usefulness. In a parliamentary government, however, an appeal to the people means an appeal to the present opinion of the people, for it can mean nothing else. The elections to the House of Representatives would be the answer to this appeal, and it is the house, therefore, which would be clothed with the power of the people.

I shall now boldly assume that I have convinced the reader that all I have said is true, and I shall lay it down as a foundation for further discussion that, if a responsible ministry were introduced into our government, the House of Representatives would acquire the powers of the House of Commons; that the Senate would occupy a position similar to that of the House of Lords; and that the president would be reduced to such a condition that, except for the absence of a pedigree and of crown jewels, he might well bear the dreaded name of King. I wish now to inquire what effect such a state of things would have upon the relations of the state and federal governments. In discussing the government of the United States, Mr. Bagehot remarks, "After saying that the division of the legislative and executive in presidential governments weakens the legislative power, it may seem a contradiction to say that it also weakens the executive power. But it is not a contradiction. The division weakens the whole aggregate force of government—the entire imperial power; and therefore it weakens both halves." The converse of this is also true. The union of the legislative and executive departments would increase the aggregate force of the federal government,—would increase its power to accomplish its purposes; and would, therefore, enable it with much greater ease to encroach on the authority of the states if it should desire to do so. Now it is almost an axiom in political science that the powerful always hunger for more power, and that the ability of one body to encroach upon the authority of another is the father of a desire to do so. But this is not all.

It is claimed by those who advocate a parliamentary government for this country that such a government would increase the interest of the people in national affairs; and this in itself is a very good thing, but it must not be forgotten that a concentration of popular interest means a concentration of popular power. If the people become excited over a federal issue beyond a certain point, if they learn to look upon it as a matter of paramount importance, they will endeavor to give effect to their opinions with all the power that they possess, without much regard for the theoretical rights of the states. We saw an example of this at the time of the Civil War. It is indeed a proof of the strength of our Constitution that the war did not produce a far greater concentration than we have witnessed, and that the system has so nearly recovered its equilibrium; but in spite of its strength the Constitution would not stand many strains of such violence. Now, of course I do not mean to assert that under a responsible ministry the popular excitement would at all compare with what it was at the time of the Civil War; but I do mean to say that national questions would constantly assume an importance in the eyes of the people which would entirely overshadow local interests, and that a responsible ministry, armed with the power of public opinion, would bring to bear upon the states a steady pressure which they would be unable to resist. It has been said that the United States is still in its feudal period, and to a certain extent the metaphor is appropriate; because, just as the federal barons in the Middle Ages presented points of physical resistance to the centralizing ambition of the king, so today the states present points of moral resistance to the centralizing tendency of our national government. They form centers for the organization of local opinion, and rallying points for those who are in a minority on federal questions.

We have not yet considered the effect of a responsible ministry upon the most vital part of our government, the part on which the whole system hinges, and that is the authority of the courts to refuse to treat as law a statute which violates the provisions of the Constitution. It is this which marks the limits of the different powers in the government, which prevents gradual and unobserved encroachments, and makes it possible to maintain a system of divided sovereignty. To European statesmen this power of our courts is a standing wonder, but to the American it is the obvious and natural result of a written

constitution. It is, in fact, the logical consequence of a limited form of government. Suppose, for example, that a legislature is invested with only a limited authority; any act outside that limit is unauthorized, *ultra vires,* as the lawyers would say,—that is, beyond the powers of the legislature,—and has no force. Every one may disregard it, for it is entirely invalid, and clearly the courts cannot give it any effect. Inasmuch as the legislature represents the people, and in the states, at least, the very same people who establish the Constitution, it may seem strange that they should limit the power of their own representatives; but it is precisely because the people alone are the unquestioned source of all government in this country that they are willing to limit their own power. The most astonishing thing to foreign statesmen, however, is not that the people should profess to limit their own power, for this has been done in European constitutions, but that they should keep to those limits, and allow the courts to disregard the acts of their representatives when they overstep them. In the United States, on the other hand, all this is so much a matter of every-day occurrence that we are in the habit of looking upon a constitution as possessing a sort of intrinsic strength, and maintaining itself *proprio vigore.* The illusion is beautiful, and justified in our own case by experience, for it is founded on the respect which our citizens feel for the law, and especially for those fundamental principles which are embodied in their constitutions. But in reality a constitution can retain its force only so long as the people care for it more than they care to effect any immediate object. Every government is bottomed on force; or, at least, its experience depends upon the consent of those who have power to change it, and in a purely democratic nation the form of the government depends upon the consent of the majority. When the majority make up their minds that they would rather amend the constitution than fail to effect some desired object, it becomes certain that the constitution will be amended, and if this happens often the fate of the constitution is sealed. The Constitution of the United States depends, therefore, upon the fact that the people, with rare exceptions, care more about that Constitution than about any present issue; and the courts are supported in holding a statute unconstitutional because the people cling to the fundamental principles of law represented by the court with more affection than they feel for the statute which the court decides to be invalid.

Now some one will, perhaps, concede that all this may be very true, but ask how a responsible ministry affects the matter. It affects it vitally, because, as I have attempted to show, a responsible ministry involves the fusion of the legislative and executive branches of the government, and the concentration of all political power in the hands of the direct representatives of the people; and this, accompanied by the increased excitement over national issues and the decay in the political power and importance of the states, would accustom us to seeing rapid and unlimited effect given to the opinions of the majority. The people would soon learn to chafe at the delays and obstructions of our constitutional methods, and lose the habit of restraining themselves for the sake of an ideal; while the majority would naturally consider every political issue as of paramount importance, and feel that the solution of a pressing question ought not to be endangered for the sake of any theoretical principles, or in order to preserve the forms of a paper constitution. The courts, too, would find themselves in a very different position. Instead of standing between the different branches of government among which political authority is divided, and limiting the power of one for the benefit of another, they would have the full force of government on one side, and nothing to support them on the other. At present the more important questions of constitutional law before the court usually involve the authority of the nation as against the states, or the rights of the states as against the nation, or the power of one department of the government as against another; and even when the court holds an act unconstitutional on the ground that it violates one of those provisions which are established solely for the protection of individuals, it does not set aside the act of the people, but only the act of a body which but partially represents the people, and exercises only a very small part of the popular sovereignty. But under a parliamentary government a court which should venture to declare a statute unconstitutional would be brought face to face with the people themselves.

In a speech at Edinburgh, two or three years ago, Lord Salisbury is reported to have said that he did not often envy the Americans anything, but that there was one institution which he did envy them, and which he should like to see adopted in England, and that was a court possessing power to declare a statute unconstitutional. No doubt the Tory leader would have been pleased with any institution which would check the legisla-

tion of the Liberals, but in this instance he was unfortunate, because he desired an impossibility. Apart from the fact that the one principle of the English Constitution is the omnipotence of Parliament, and that the court would find no ground to build its decisions upon, no court in England could possibly have power to hold acts of Parliament invalid, because Parliament is, in effect, a meeting of the people acting through their representatives. Complete sovereignty resides, therefore, in Parliament, and to oppose the will of that body is to oppose the will of the people. But the American Congress has not complete sovereignty, nor has any department of the government, state or federal, nor, indeed, have all of them acting together. Congress has no authority to declare the will of the people, except within the limits prescribed by the Constitution; for the Constitution itself is the final expression of the popular will, and is binding upon every officer of the government as the supreme law of the land. I am not speaking of the Constitution from a legal standpoint alone. I am speaking of it as it is regarded by the people themselves; for if this view of the matter were entertained only by the lawyers, no court which assumed power to set aside an act of Congress would be tolerated for a moment. The power of our court, then, to pass judgment upon the validity of statutes depends upon the fact that the voice of Congress is not the voice of the people: but if a parliamentary form of government were to be introduced into this country, Congress, like the British Parliament, would acquire authority to declare the will of the people, and then no court could long withstand its power.

I have, so far, only attempted to consider the probable consequences of making cabinet officers responsible to Congress, and to prove that, under such a change of methods, our government would centralize strongly, at the expense of the authority and independence of the states, and that in time the national House of Representatives would draw unlimited political power into its own hands. But a recent writer on the subject claims that, in the absence of a responsible ministry, these results have already taken place, and this article would be incomplete without a review of the facts on which he bases his opinion.

In his book on Congressional Government Mr. Wilson uses a line of argument very different from the one commonly in vogue with those who advocate a parliamentary government for

this country. He says nothing, in fact, inconsistent with what I have described as the probable consequences of ministerial responsibility in this country, but, on the contrary, after the manner of Bagehot's essay on the English Constitution, he attempts to show that the actual form of our government is already radically different from the plan that our forefathers designed, and from the descriptions to be found in our political literature. He claims that the supposed checks and balances of the system have failed; that the president has ceased to be an obstacle to the power of Congress; and that the states are no longer able to resist the encroachments of the federal government. Of the power of the Senate, curiously enough, he says but little, although he devotes a chapter to this body; but he certainly gives the reader the impression that he considers all real power centered in the committees of the House of Representatives. All this is the more surprising, because one of the complaints of Congress which we most commonly hear is that the House of Representatives has brought itself into such a condition that it is unable to legislate. Of the judiciary, after explaining that the courts do not and cannot put any effective restraint upon the actions of Congress, Mr. Wilson says, "This balance of judiciary against legislature and executive would seem, therefore, to be another of those ideal balances which are to be found in the books, rather than in the rough realities of actual practice;" and later he adds, "For all practical purposes the national government is supreme over the state governments, and Congress is supreme over its so-called coordinate branches. Whereas Congress at first overshadowed neither president nor federal judiciary, it now on occasion rules both with easy mastery and a high hand." On these facts he founds the argument that if our theoretical division of powers has miscarried in practice, and if our government has already become centralized, we had better adopt that form of centralized government which will work the best; we had better establish a responsible ministry. The argument is logically sound, and the conclusion follows properly enough, if the premises are admitted, but these I cannot agree with, and I wish to consider them in the brief space which this article will allow.

Our government has undoubtedly centralized since the beginning of the century; for the greater facility of communication between the different parts of the Union, the formation of vast

corporations comprising several states in the scope of their operations, and the consequent industrial development of the country make demands upon the federal government for the exercise of powers which were far less important eighty years ago. There exists unquestionably a tendency to centralization, which all citizens who care for the Constitution should watch with a jealous eye; but it is a tendency very easy to exaggerate, and not yet developed to such an extent as to impair the political power and independence of the states. The war and the reconstruction which followed it necessarily produced for a time a great increase in the power of the national government. A part of this increase of power has been rendered permanent by the adoption of the recent amendments to the Constitution, while the decision of the Supreme Court in the legal tender cases has assured to Congress the possession of another part; and for the rest, it is difficult to shake off habits of political thought once acquired; but for the last ten years the federal government has been playing a constantly decreasing part in the internal affairs of the southern states, and he must be blind to the signs of the times who does not perceive the tendency to leave to these states the management of their domestic interests. The Supreme Court, moreover, in the civil rights cases has struck a heavy blow at the parental policy of Congress, by denying to it the right to interfere directly with the social condition of the citizens of the states, and limiting its authority to counteracting and redressing the effects of the action of the state authorities. Mr. Wilson cites as an illustration of the growth in the power of the federal government the enormous increase in the number of federal officials; and so long as offices are made a reward for party service, this standing army of placemen adds dangerously to the political power of the United States; but when we obtain the complete reform of the civil service, for which every citizen ought to hope, the mere number of federal office-holders will in itself be little or no source of power to the national government. Mr. Wilson also mentions the practice of spending federal money to make internal improvements, and undoubtedly the power of Congress to do this was hotly debated fifty years ago, and has now become an unquestioned part of our constitutional system; and yet even during the administration of President Jackson, Congress, under the name of deposits, in effect gave to the states the surplus

from the national treasury, and it can hardly be said that Congress has of late years done anything under the name of internal improvements which carries the doctrine of implied powers further than this. The statute which provides for the appointment of supervisors of election is cited as the most galling example of the assumption of power by the national government. But it must be remembered that the statute was intended to counteract an illegal exercise of power,—not by the states, it is true, but by persons whom the states ought to control,—and that the statute has not so much the effect of changing the original balance of power between the states and the federal government as of restoring the balance of power; for the framers of the Constitution never contemplated any local power to tamper with the results of elections. The fact appears to be that, although the United States has largely increased its authority, the government has not become centralized to such an extent as to upset the balance of power, or even to disturb seriously the equilibrium of the system. Nor has the gain been all on one side. Certain states, of which New York is a conspicuous example, for a long time chose the presidential electors by districts, but by adopting the plan of choosing them on a general ticket they have greatly consolidated their political power. We must not forget, moreover, that the electoral commission in 1876 decided that Congress had no power to go behind the returns of the states in counting the votes for president; whereas in 1839 the House of Representatives refused to allow certain members whose election was contested to take part in the organization of the house, although these members held the official certificates of the governor and council declaring them elected; for the house denied that the certificate of the state gave the holder even a *prima facie* right to a seat. The two cases, of course, are not exactly parallel, and the decisions were rendered under the pressure of party excitement; but still they go far to disprove the theory that the political power of the states has decayed.

The relative strength of the three departments of the federal government has suffered much greater changes during the century, but it has not always been the same department that has encroached on the others. At times the power of Congress has been in the ascendant, at times that of the president; and this must continue to happen as long as Congresses differ so much in the talent and experience of their members, and as long as a

weak and short-sighted president is unable to exercise as much influence as a president of ability and force of character. But Mr. Wilson is in error when he states that "Congress is supreme over its so-called coordinate branches." A sufficient proof of the continuing strength and independence of the president is to be found in the fact that to this day he has no hesitation in using his power of veto; and, indeed, the veto has been used fully as often of late years as at any period of our national existence. If any further evidence of the power of the president is needed, it is enough to refer to the last great struggle he has had with Congress,—the controversy between President Hayes and Congress about riders upon appropriation bills, in which the president was completely victorious. The veto can, of course, be overridden by a two-thirds vote of both houses of Congress, and this is done as often as the majority in both houses is large enough to make it possible; but this is no encroachment on the part of Congress, for it is merely the legitimate exercise of a power which Congress was intended to possess.

Turning from the legislative to the executive functions of the president, we find that his power has undergone very great variations. When Jackson adopted the practice of giving federal offices as a reward for party service, he forged for the use of presidents a political instrument of tremendous power. A stranger, indeed, who knew nothing of America except what he could hear during a presidential campaign, would readily believe that the president held the only federal office of any real importance. This results in part from the habit of making the candidate for that office the standard-bearer in the fight, but it comes also from the fact that the party workers yearn more for the spoils which lie in the gift of the president than for the control of legislation which lies in the hands of Congress. The president has not been suffered to reap in peace the benefit of this great invention, for a practice has arisen by which the congressional delegations from the several states have acquired a great power over the distribution of the federal patronage. This practice has grown gradually and silently, but during the attempt of Congress to tie the hands of President Johnson it passed the Tenure of Office Act, which struck an open blow, not only at the power of the president to use the spoils for his own advantage, but also at his power to direct the policy of his own administration. The authority of the president fell at this time lower than it has ever been before or since; and although the

Tenure of Office Act, in a slightly modified form, still exists, it has not the political importance which it possessed in Johnson's day. The doctrine that the president has, under the Constitution, no right to remove any federal officer without the consent of the Senate is not new. It has been a subject of dispute ever since Washington's administration, but in Johnson's time it was used to force him to retain a cabinet officer who was bitterly opposed to his policy. It will probably be a long time before the Senate tries to do this again, and it is clear that such an attempt could not now be successful. The subject of the appointing power of the president cannot properly be dismissed without a reference to the principle of senatorial courtesy, by which each Senator of the president's political party controlled an important part of the federal patronage in his own state, because the contest between President Garfield and Senator Conkling on this matter is one indication of the recovery by the president of his lost influence. Mr. Wilson's views in regard to the position of the president are explained by a passage in which he says, "No one, I take it for granted, is disposed to disallow the principle that the representatives of the people are the proper ultimate authority in all matters of government, and that administration is merely the clerical part of government." The first proposition contained in this sentence is true in a parliamentary government, but the second is not true in any form of government; and that it cannot be applied to our president, even if we pass over the veto and the power to control foreign relations, is clear when we remember how large a part the executive played in the final settlement of the southern question. The importance of the executive in the solution of that question was not exceptional. It has long been evident, for example, that Congress can do very little toward the reform of the civil service without a zealous cooperation on the part of the president.

It is only necessary to look at the recent volumes of the Supreme Court reports to be convinced that the judiciary has not lost its independence or its power. The decisions in the civil rights cases, in the Arlington Heights case, and in the case which decides that the House of Representatives has no power to examine a witness and to commit him for contempt on a matter not strictly connected with its legislative duties, all prove that the judiciary has not become subservient to the other departments of the government. In spite of the wellknown packing of the bench under President Grant, and the unfortunate

connection of the judges with the electoral commission, the Supreme Court appears to stand at the present day as high in public estimation as it ever stood before. I might with truth go further, and say that the concentration of power caused by the Civil War has turned in the long run mainly to the profit of the national courts. The recent amendments to the Constitution have increased but little the powers of the president and of Congress, but they have added enormously to the authority of the federal judiciary.

Among the recent historical studies published at Johns Hopkins University is a valuable essay, by Mr. Horace Davis, on the Relations of the Departments as Adjusted by a Century, and the conclusions of the author are singularly contradictory to those of Mr. Wilson. He shows that in the states the executive has been continually gaining at the expense of the legislature, and he considers that the president is recovering the power which he lost during Johnson's administration, while he believes that the judiciary, both state and federal, has steadily increased in power and influence. Slight variations, however, in the relative strength of the different departments of the government do not affect my argument, so long as the balance of the system remains substantially unimpaired. It is enough that the power of the federal government is still limited by the rights of the states; and that the houses of Congress, the president, and the federal judiciary can each check any serious encroachments on the part of the others.

## CABINET GOVERNMENT [1]

That the country is dissatisfied with its present government may be gathered even more from private conversation than from comments in the public press. Nor is that dissatisfaction in any way due to surviving party animosities. Party feeling has always been a much smaller factor in the mentality of the average Englishman than politicians and political agents are apt to assume. The great strength of the party system in this country does not reside in the supposed hereditary inclinations of the mass of the people enshrined in the well-known but misleading couplet:

[1] By Harold Cox. Edinburgh Review. 222 : 426-37. October, 1915.

Every little Briton that is born alive
Is born a little Liberal or a Conservative.

It is maintained by the solid pecuniary interests which have grown up around the accidental division of the governing classes into Whigs and Tories two hundred years ago. At the summit we have prominent politicians competing for well-paid and much-respected offices of state; at the base we have in every constituency little groups of wirepullers and political agents whose chance of local distinction and modest remuneration would disappear if the conflict between the two political parties came to an end. The prominent politicians are dependent upon the zeal and activity of these humble agents, and the latter in turn are dependent upon the artificial rivalry of the prominent politicians. But the normal attitude of the normal Englishman is one of indifference, leaning toward contempt. "A plague of both your parties," he constantly says, and, except at election times, sincerely wishes. When an election is on foot the situation is slightly modified. An appreciable section of the population—but probably less than half, even then—gets caught with election fever, and in that diseased mental condition shouts itself hoarse with the repetition of party cries which it understands no more than the people who invented them. To secure this simulacrum of enthusiasm is the work of the local wirepullers and agents. It is for this that some of them receive regular salaries from the prominent, or would-be prominent, politicians, while the rest are rewarded with various douceurs in the shape of factory inspectorships, and seats on the local bench of magistrates. That is the party system in its reality, and the main body of the nation has little interest in it. Consequently, the formation of a Coalition Cabinet was everywhere welcomed except by the professional politicians, and the present dissatisfaction with that Cabinet is due to popular disappointment, not to political regrets.

That disappointment arises from an instinctive feeling that the Cabinet is lacking in courage. In war, courage is the first essential of success. The soldier who lacks courage cannot do his duty, and ends in the worst cases by being shot for cowardice. No one believes that the bulk of our soldiers have failed in this respect. They have gone to death in their country's defence with a smile on their faces and a joke on their lips. On the other hand, the statesmen who rule over us seem every

moment to be trembling lest their political lives should be imperilled, and are afraid to take any step that might conceivably bring them within the political danger zone. Yet man for man our politicians are humanly as courageous as our soldiers. Several members of Parliament are engaged in active military service; some have already given their lives for their country. There is no reason to believe that others would hold back if the call or the opportunity came to them. Nor is it justifiable to assume that members of the Cabinet are individually in any way lacking in public spirit, or less inclined than other men to make personal sacrifices for the public good. It is not the men themselves that are to blame, but the system that binds them.

It is indeed an impossible task which a succession of accidents—historical, political, international—has imposed upon this committee of twenty-two gentlemen called the Cabinet. The public, ever impressed by names, is half inclined to imagine that the mere fact of calling a committee a Cabinet endows it with semi-divine attributes. But the members of that committee remain human, whatever they are collectively called. Some of them are men of extraordinary ability; others are about the average of leading Englishmen in the professional and commercial classes; but they are all human. Let any man whom fate has condemned to sit frequently on committees ask himself whether he would care to trust his private fortune to the control of a committee, meeting about twice a week and composed of twenty-two men—all of them with a multitude of duties to perform, several of them temperamentally obstinate, and a considerable number habitually loquacious. It is true that the whole work of the Cabinet is not done when it is sitting. Confidential papers printed under conditions of extreme secrecy are daily—sometimes almost hourly—circulated to the members of the Cabinet. These they are supposed to study, so that they may bring to the council a matured judgment. In practice, it is doubtful whether any Cabinet minister ever succeeds in getting a real grip on all the important papers circulated, and it may safely be said that some ministers rarely read half of what they receive. No blame attaches to them for such apparent neglect. Each of the twenty-two (with two or three exceptions) has, in addition to his advisory duties as a member of the Cabinet, very important executive duties as the head of a government department. These latter he cannot neglect; for, as regards them,

his responsibility is individual and direct. Moreover, if he fails to keep in touch with the work of his department he will be at a disadvantage in relation to his colleagues when any question affecting that department comes before the Cabinet.

It has to be realised that the necessary division of the government of the country into a multitude of separate departments creates a feeling of departmental *esprit de corps* which is quite as strong as the *esprit de corps* in any British regiment. The permanent officials in each department look upon their department as the one perfect unit of administration in the whole British Empire. Anything which diminishes the importance of that department is an outrage to be attacked with all the resources of a well-organised bureaucracy; anything which adds to the status of the department by increasing the number of officials employed or the scale of salaries paid is a reform to be welcomed even though it may involve unnecessary expenditure to the nation or direct injury to some other department. The distinguished politician, whoever he be, who is placed at the head of a department very quickly discovers that if he wishes for a peaceful or even a tolerable life he must fall in with the sentiment of the office which he is supposed to control. If he fails to fight for its interests it will ruthlessly, by a dozen subtle devices, revenge itself on him. Therefore, the first business of a minister is to establish and maintain harmonious relations with his own department. What time remains can be given to preparing for his duties as a cabinet minister, unless it happens to be wanted for preparing political speeches, or for wrestling with deputations, or for the relaxation of the golf-course.

Even if the issues which the Cabinet has to decide were few and simple, it would be very difficult indeed to obtain a satisfactory decision from a committee of twenty-two gentlemen whose minds are so filled with other duties. But the issues which come before the Cabinet are neither few nor simple. The Cabinet is the final governing authority, and whenever any departmental question arises which might lead to trouble with the House of Commons or with the Press, or which might provoke a conflict between two departments, it goes to the Cabinet for decision, even though it may be quite a trivial matter from the national point of view. Multitudes of such questions constantly come before the Cabinet. Doubtless most of them can be quickly disposed of, but at any moment some trivial point may involve a time-wasting wrangle between two

equally headstrong ministers, ending in a compromise which satisfies neither and may be positively injurious to the public service.

Beyond such relative trivialities, which waste both time and temper, there are the really important national issues upon which the country looks to the Cabinet for guidance and decision. In dealing with these the weaknesses of a committee of twenty-two members are even more emphasized. For many of the issues to be decided involve problems which require for their solution both an intimate acquaintance with complex facts and the gift of estimating the probable sequence of coming events. No minister whose mind is absorbed with departmental duties is likely to be well equipped in either of these respects. He has no time for the profound study of any question, and the daily routine of his office gets him into the habit of feeling that only the events of today matter.

Moreover, the Cabinet may sometimes find its liberty of decision impaired by the previous action of an impulsive minister. There is good reason to believe that this has happened more than once since the present war began—not always with satisfactory results. Yet it is difficult altogether to blame a minister who, realising the importance of prompt action, prefers to take the matter into his own hands rather than to wait to discuss it in all its bearings with a score of colleagues with some of whom he has only a limited intellectual sympathy. In such an event the strictly regular course for the Cabinet would be to insist on the resignation of the offending minister; but in practice that course is generally impossible because of the political disturbance that it would create. Thus a departmental minister, who is unscrupulously playing for his own hand or is honestly impatient with the slowness of his colleagues, may commit the government to steps of the utmost importance before the Cabinet has had an opportunity of even considering the matter.

These are evils which are inherent in our Cabinet system as it at present exists, and no mere change of personnel will get rid of them. They exist quite as much in a party Cabinet as in a Coalition Cabinet. The somewhat naive idea of the public that the members of one political party, incorporated in a Cabinet, work together with one heart and mind has, needless to say, no foundation in fact. The energy with which members of opposing political parties attack one another in

public is only surpassed by the vigour with which members of the same party criticise one another in private. They would hardly be human were it otherwise, and they would certainly not be worth their salaries. For if any twenty men succeed in maintaining permanent unanimity, at least nineteen of them must be mentally deficient. Nor is it the failure to agree on all points that matters. When men are working together each must occasionally yield his judgement to the judgment of others. The trouble is that the means for arriving at a sound collective judgment are barred by the character of the Cabinet. It is in the first place too large for that intimate interchange of thoughts, and half-thoughts, which takes place when three or four men are bending their minds together to the solution of a difficult problem. In the second place, the heavy departmental duties of the majority of ministers render it impossible for them to give adequate consideration to the questions that the Cabinet has to decide.

In practice some mitigation of the Cabinet system is constantly sought by the creation of sub-committees to deal with particular problems. But this device does not meet the difficulty that most departmental ministers are already overworked; nor does it absolve the Cabinet from its collective responsibility. No proposal that a committee of the Cabinet may make can be put into operation without the approval of the Cabinet as a whole, and if a committee makes proposals which for any reason are contentious in character the battle has to be fought out in full council.

Another device which was employed, it is alleged, to a large extent when Mr. Balfour was prime minister is the establishment of what is known as an "Inner Cabinet," consisting of the four or five men who are most influential and whose will in effect dominates that of all the rest. The objection to this device is that it is haphazard in character and uncertain in operation. In addition, it is humiliating to those Cabinet ministers who are left out in the cold. As cabinet ministers, they are all equally the "servants of the King," sworn to give their best counsel to him. It is not fair to ask them to cover with their names decisions about which they have never been consulted, and the best type of Englishman would decline to accept such a rôle. Therefore the device of an informal Inner Cabinet must always be liable to break down in practice. Nor does it in the least deal with the difficulty that ministers who are heavily

weighted with departmental duties cannot give their minds with sufficient freedom to the general problems of government.

Take, for example, Lord Kitchener's position. Lord Kitchener is not only a soldier and a military administrator of the very first order, but he has also had immense experience in problems of civil administration and in the great underlying problem of handling men. No man commands greater respect among his fellow countrymen; in no man's judgment is the country more willing to place unhesitating confidence. Whether Lord Kitchener is best employed in deciding the important departmental problems arising daily within the War Office, or in helping to decide the broader national problems which the Cabinet must finally settle, is a question on which no opinion is here suggested. The point is that Lord Kitchener cannot efficiently discharge both duties. The same consideration applies with varying degrees of force to other Cabinet ministers. In effect, we are asking our Cabinet ministers to discharge duties which are beyond human strength, and therefore are not in reality discharged.

Before considering what possibilities of reform lie open to us, it is desirable briefly to take note of the conditions which have led to the present situation. The Cabinets of the eighteenth and the earlier years of the nineteenth century differed in two important respects from the Cabinets of the twentieth century. In the first place they were smaller; in the second place the departmental duties of cabinet ministers were much lighter. It was not until the middle of the nineteenth century that the number of ministers in a Cabinet began to be expressed in two figures; while in the earlier part of the century the activities of some departments were so small that a minister could afford time himself to open letters addressed to his department and to deal with them personally. Today in most departments a special staff is employed merely to open letters and to distribute them to the different clerks who have charge of the subjects involved. During the years that have elapsed since the middle of the nineteenth century the growing activity of all departments of state has been met, excusably enough, not by re-designing the machinery of government but by duplicating or triplicating the existing mechanism. As each important new office has been created the minister appointed to that office has been held to be entitled to a seat in the Cabinet, so that the number of cabinet ministers has steadily grown.

It may fairly be asked whether it was not possible, while admitting new ministers to the Cabinet because they represented new functions, to get rid of some of the old ministerial offices which were no longer of any real administrative importance. For example, the Cabinet still contains a Lord President of the Council, a Lord Privy Seal, and a Chancellor of the Duchy of Lancaster. These are offices that have come down from a period when the whole construction of the government was totally different from that which now exists. Their survival is partly due to the inherent conservatism of the English mind, but still more to considerations arising out of our party system of government. Every prime minister is under the obligation of finding office of some kind for prominent supporters whom he cannot afford to offend. The above-mentioned offices, to which no particular duties of importance are attached, exactly serve the purpose of providing niches for men whom it might otherwise—in view either of their personalities or of conflicting claims—be difficult to place. Consequently, these old offices have been continued, while new cabinet offices have been created to deal with new functions.

Incidentally, it is desirable here to refer to one of the most curious and most regrettable consequences of the influence of bygone conditions upon the present composition of the British Cabinet. When the government of England was in substance and fact, as well as in name, the King's Government, it was natural and reasonable that the Lord High Chancellor, as the head of the judicial system of the kingdom, should have a place in the council that advised the King. At present, in normal periods, the government of the United Kingdom is a party clique existing primarily for party ends. Incidentally, this clique may in general govern the country and guide the Empire in ways which it honestly believes to be best for the nation. But with more or less frequency issues arise which provoke a conflict between party interests and national interests; and in such cases it rarely happens that a Cabinet, dependent for existence upon party support, can venture to sacrifice the party for the sake of the country. And even if this conflict never arose, it would still be highly inconvenient that the clear distinction between executive and judicial functions, which is one of the cardinal principles of our modern system of government, should be ignored in the supreme governing council of the kingdom.

The Lord Chancellor is a judge—the first judge of the Realm.

As such, he ought to be able to approach his grave duties without any prepossession due either to the influence of party politics or to a feeling of loyalty to colleagues with whom he has shared responsibility for executive and legislative proposals. We rightly assume that all our judges, from the Lord Chancellor downwards, are honest in intention; but it is not fair to any man to ask him to interpret, as a judge, an act of Parliament which has been the subject of keen controversy, especially when he, as a politician, has taken part in that controversy; or, again, when his decision may affect the political interests of the Cabinet of which he is a member, and thus conceivably imperil his own tenure of one of the most distinguished offices under the Crown. In the case of all other judges, law and custom provide that they shall hold office for life, so that no personal consideration may affect their impartiality. Yet the highest judgeship of all is deliberately treated as a political office, to be vacated with every change of the ministry. One of the minor evils of this indefensible system is the expense involved; for every ex-Chancellor is entitled to a life pension of £5000 a year, even if he has only held office for a day. At the present moment the country is liable to a charge of £10,000 a year as salary for one Lord Chancellor and £15,000 a year for pensions for his three immediate predecessors. The Irish Lord Chancellorship is subject to the same rules and involves similar extravagant expenditure, though the amounts involved are slightly smaller.

Even if no other reform is made in our cabinet system the practice of treating the Lord Chancellorship as a political office ought to cease. It cannot be argued that the presence of the Lord Chancellor in the Cabinet is necessary to enable his colleagues to have the advantage of his legal advice. A considerable proportion of the members of every Cabinet are lawyers, and it is more or less a matter of chance which one of these lawyers is appointed to the Woolsack. The present prime minister might have become Lord Chancellor at any time, in recent years, had he wished to do so. If a Unionist ministry had been in power Sir Edward Carson, who is also a member of the present Cabinet, would probably have been made Lord Chancellor; while rumour says that the present Home Secretary was offered and refused the Woolsack. It is impossible to contend that the legal ability of these three distinguished lawyers has been so impaired by the mere fact that they are not sitting on the Woolsack that they require the constant presence of the actual

occupant of that seat to guide them on points of law. As a matter of fact, special provision is made for securing regular legal advice for the Cabinet by the appointment of two law officers, who are paid upon a scale which even surpasses the liberality of the Lord Chancellor's remuneration. The real reason for maintaining the Lord Chancellorship as a political office is that each party in turn wishes to keep this great plum of the legal profession as a reward for one of its partisans.

In passing, it may be pointed out that the inclusion of all this mass of highly paid legal talent in the government does not apparently suffice to keep the Cabinet straight even on fairly obvious legal points. For example, we were told on the authority of the prime minister, speaking in the House of Commons on the 30th of September, that the budget, as introduced by the Chancellor of the Exchequer, represented "the unanimous judgment of a united Cabinet." Yet that budget included a proposal to tax currants, which had to be abandoned because Great Britain is bound by a convention with Greece not to increase the tax on Greek currants except after one year's notice. Again, the procedure proposed by the government for authorizing the budget included a resolution in Committee of Ways and Means affecting postal charges, which the Speaker ruled to be not only superfluous but probably inconsistent with the provisions of the Parliament Act. The preparation of this resolution was doubtless not the result of the "unanimous judgment of a united Cabinet," but was due to some subordinate member of the government. Yet when the country pays enormous sums to so many lawyers it might be imagined that they would keep their colleagues from making such obvious blunders. The excessive lawyer element in the government is ultimately due to the same causes that have led to the overgrowth of the Cabinet. Lawyers predominate in the House of Commons, and our political system requires that places should be found for those who render important services to their party.

This is the root of the evil, and as long as the party system continues there is little hope of a reduction of the highly salaried posts which are emptied and refilled every time that a new ministry comes into office. In addition to the twenty-two members of the Cabinet there are about thirty other ministers—including the Lord-Lieutenant of Ireland and the Irish Lord Chancellor—and some fourteen ministers of the Royal Household. With two or three exceptions these removable

ministers are all paid. Their salaries range from £702 a year for a Lord-in-Waiting to £20,000 a year for the Lord-Lieutenant of Ireland. The Attorney-General and the Solicitor-General, in addition to salaries of £7000 and £6000 a year respectively, get more than as much again in fees. The aggregate sum divisible among the sixty-six ministers of various kinds who go out of office at a change of government is something between £170,000 and £180,000 a year or an average of about £2700 a year each. In addition, several ministers have houses provided by the state, including the provision of lighting, heating and furniture. There is neither political, nor social, nor economic, justification for the maintenance of such an enormously expensive system of government. Both the number of ministers and the scale of ministerial salaries ought to be cut down. That a salary of £5000 is not an imperative necessity for a cabinet minister is sufficiently proved by the fact that several cabinet ministers only draw £2000 a year. Many of the junior ministers receive only £1000 or £1200; yet there is active competition among members of Parliament for these minor posts. The whole scale of salaries, both for political and for judicial services in England, is far in excess of that which obtains in either France or Germany, or even in the United States. In Switzerland a cabinet minister draws £400 a year.

If this enormous expenditure conduced to efficiency, the money would not be grudged; but it does not, it only conduces to further extravagance by setting an extravagant standard. Throughout the government services the scale of the ministerial salaries influences the scale of the salaries of permanent civil servants. In an office presided over by a minister drawing £5000 a year the civil servants obtain higher salaries than in an office where the minister's salary is only £2000, although the work is identical in character. Moreover, ministers who are themselves lavishly paid are inclined to look with a tolerant eye upon lavishness elsewhere. Thus from no minister has there come any protest against the notorious scandal that a large number of retired military officers are being employed in the War Office upon routine work and are drawing not only the full pay for their work but also their pensions.

That is one amongst a thousand examples which might be given of the inefficiency of our present system of cabinet government. There is no coordinating authority with sufficient detachment to be able to maintain an effective control over

individual ministers. The ministers themselves compose the authority which ought to control them, and as a result they are not controlled. For reasons which are both human and obvious no minister cares to direct the attention of the Cabinet to the way in which another department is being managed by its head, who is also a member of the Cabinet. Retaliation would be instant and unpleasant.

Dimly realising these difficulties, a section of the public has clamoured for a dictatorship. The idea is impossible. There is no man in the United Kingdom whom the country would accept as a dictator, and the whole conception of a dictatorship is foreign to our English traditions and habits. For good or for evil the committee method of government is part of our blood and bone. All that we ask for is a committee so constituted that it has a reasonable chance of being able to do the work entrusted to it. The Cabinet, as at present constituted, has no such chance: first because it is too large, and second because it includes the very ministers whose work it ought to control.

Neither defect has any legal sanction behind it. The Cabinet is a committee composed of members of the Privy Council nominated by the prime minister and appointed by the King. No law prescribes how many members of the Privy Council shall sit on this committee, nor is there any necessary connexion between membership of the Privy Council and ministerial office. On the contrary most of the present members of the Privy Council are not ministers. There is nothing to prevent the prime minister, with the approval of the King, from limiting the Cabinet to five Privy Councillors, none of whom should hold ministerial office.

The double effect of this change would be to relieve the members of the Cabinet of departmental duties, and at the same time to reduce the departments to effective subordination to the Cabinet. It would still be necessary to appoint a dozen or more ministers to take charge of the principal departments of state, and they would be appointed as now from among prominent politicians. One of the most satisfactory features of our system of government is the combination of the temporary politician with the permanent civil servant. Each tends to correct the vices of the other. But in order to secure the full advantages of this happy combination, it is essential that there should be above all the departments a supreme controlling council independent of the ministers that it has to control. It is

hardly necessary to add that the proposed Cabinet, while remaining itself a non-ministerial body, would always be free to invite to its councils any minister or any permanent official whom it wished on occasion to consult.

## SECRECY AND THE CABINET SYSTEM [1]

Cabinet government is government by a committee or group of men who agree to take common action on common resolves. "Collegiate Government," as the political philosophers of the seventeenth century called it, involves the creation of a composite artificial personality which is supposed, because it is composite, to have greater and higher faculties than those of the ordinary man. A's dash and courage are added to B's wisdom and steadfastness. The product is supplemented by C's knowledge, D's powers of logic, and E's eloquence. By agreeing to work together, and to let the acts of the whole body be the acts of each, even though the whole policy was never completely endorsed by any individual member, a net result was supposed to be attained transcending in force and wisdom the capacity of any single component of the group. Whether this ideal has ever been reached in practice is not a matter which we need discuss at the present moment, though there is perhaps more to be said for it than the plain man supposes. All we can say now is that, granted you are to have a successful system of cabinet government, government by this artificial person or committee personified, you must have secrecy in council, secrecy as to the motives which collectively inspire the joint action, secrecy as to which members of the committee agree or disagree with the course of action adopted by the whole—secrecy, in fact, on the majority and minority accounts. *Secrecy is essential, a necessary instrument of cabinet government.* Unless it exists and is maintained in its most rigid form, the cabinet system will never work satisfactorily, will tend, rather, to prove a source of weakness and distraction. It will breed hate and temper, dissolve agreements, and give rise to a sense of treachery where there should be confidence and of restlessness where there should be security.

The reason why secrecy should be preserved, not from fear of penal regulations, but in accordance with the strictest code

[1] Spectator. 116 : 540-2. April 29, 1916.

of personal honour, is not far to seek. Men in a Cabinet must be loyal to one another, to their chief, and to the committee as a whole, or they will be undone. By loyalty we do not mean that they are merely to refrain from backbiting or from undermining each other's position, or, again, from trying to better their own positions by pushing a colleague down. We mean something a good deal more elemental. When a matter has been decided upon in the Cabinet, then the men who opposed the course ultimately adopted must make their choice either of resigning or else of whole-heartedly adopting the will of the Cabinet as their own. If their choice is in favour of remaining in the Cabinet, then both in public and in private they must defend the action of the government exactly as if their own private wishes had been accepted. The will of the whole must become the will of each. The duty of the defeated party is analogous to the duty of the barrister who, having agreed to defend a litigant, must put his client's case, whether personally he agrees with it or not, in the strongest and most convincing way that he can. To state the matter from another point of view, a man must either be in a Cabinet or out of it. If he goes out of it, then his way is plain. As long, however, as he remains in it there must be no half-hearted allegiance. Its acts are his acts, and he is just as much responsible for them and just as much bound to defend them as if he were their sole author and begetter. Inside the doors of the Cabinet there may be the most keen discussion. Outside the solidarity must be adamantine.

That absolute loyalty must exist if there is to be successful government by Cabinet or committee is obvious. No doubt it is possible to have government by a single individual—by an autocrat or a Grand Vizier, whether chosen by popular vote, as the president of the United States, or by birth, as the Emperor of Russia—but in that case the so-called Cabinet is not a Cabinet in our sense, not a gathering of equals. The position of members of such Cabinets is analogous to that of the permanent heads of our departments. They are servants, not masters. Therefore they can without injury let their individual opinions be known. It is the King, the Vizier, or the president who has the responsibility for action. Their ministers are merely executants. They act like soldiers under orders, and their personal agreement or disagreement with the orders is a matter of indifference. All they have to do is to carry them out faithfully. A cabinet minister is not a servant in this sense. He helps to

make the orders which he obeys, and acts in the double capacity of master and servant.

In view of these circumstances, the need for secrecy becomes abundantly clear. Loyalty of the kind we have described can only be maintained through secrecy. If once it is allowed to leak out that Mr. Black and Lord White were against a particular policy being adopted, that they were overruled in the Cabinet, have sulked ever since, and have tried to do their best to upset the man who was the cause of their being overruled, a condition of things is created which must sooner or later break up the Cabinet, or at any rate ruin that solidarity which alone can produce efficiency. Half-secrecy makes things more difficult than would actual debate in public. It would really be better for mutual confidence to have a verbatim report of Cabinet meetings published daily than the sort of gossip which now goes on. Under conditions of half-secrecy no one is quite sure who was the person to let out this or that cabinet secret, and every one is suspected. Further, if Mr. Black has the feeling that if he makes certain sacrifices to silence and good faith they will have no effect, because Mr. Green is sure to talk, he is very apt to come to the conclusion that he may as well be the first to secure the advantages which are to be gained by publicity.—"I had better improve my own position by letting the supporters of a particular policy know how gallantly I fought for the matter in the Cabinet, and how I was overruled by a rival group."—Unless there is absolute confidence that no man will betray cabinet secrets, however great the advantage to himself, there is only too likely to be an ignoble helter-skelter to betray them. Just as secrecy is the antiseptic of the cabinet system, so betrayal of confidence is a septic influence which poisons the whole body. When, then, an effort is being made, as it is being made now, to re-establish cabinet secrecy, it should have the support of all those who think that, on the balance of good and evil, the cabinet system of government ought to be maintained. Remember that up till thirty-six years ago—up till 1880—cabinet solidarity, supported by cabinet loyalty and cabinet secrecy, was the rule of our government, a rule that was practically never broken, or only broken by some accidental occurrence. Before that period a man would no more have thought of divulging cabinet secrets than of cheating at cards, or refusing to pay a debt of honour because it had not been incurred in legal form. The only exception to the rule was when

a member of the Cabinet retired and wished to explain his position. In that case the Sovereign gave him partial exemption from the Privy Councillor's oath of secrecy—the oath which seals the doors of the Cabinet, and ought to seal the lips of all its members.

## THE SCRAPPING OF THE CABINET [1]

In former times, whatever the subject in dispute, there was at least a government policy for the opposition to criticize. One might start from the assumption that the proposals set before the country were a definite plan, hammered out in meetings of a Cabinet which was collectively responsible to Parliament. For nearly three years that assumption has no longer held. The traditional cabinet system has been scrapped, and the authoritative text-books on the law and practice of the Constitution, from Bagehot to Lawrence Lowell, have on this topic become obsolete. In these days the utterances and official announcements of ministers are constantly clashing with one another. One minister, indeed, scarcely knows what another minister is doing.

The change came in with the Lloyd George Administration. On the question of man-power, for instance, we had repeated triangular conflicts between the War Office, the Ministry of Munitions, and the Ministry of National Service. In a speech on January 16, 1918, G. N. Barnes, a member of the War Cabinet, publicly criticized Winston Churchill's action, as Minister of Munitions, in granting a 12½ per cent war-time bonus to time workers in the engineering trades. He described Mr. Churchill as "butting in" with a new principle absolutely against the principle on which the government had been acting. During the election campaign in December of the same year Mr. Churchill announced, in reply to a heckler, that the government intended to nationalize the railways. The next month Mr. Barnes remarked in one of his speeches that he was glad to see that the railways were to be nationalized. Though a member of the Cabinet, he got his first intimation of the alleged intention of the government from this casual announcement of Mr. Churchill's, and did not seem in the least surprised to find that so important a decision had been reached without his knowing anything about it. It turned out later that Mr. Churchill had made

[1] Nation. 110 : 73-4. January 17, 1920.

the announcement in error, and that the government did not really intend to take the step indicated. In July, 1919, a remark made by Mr. Churchill in Parliament showed how far the cabinet system had been departed from. When pressed by a private member to secure a discussion on the cable delays which were irritating the commercial world and impeding trade, the Secretary for War replied that "my honorable friend has as good access to the Leader of the House as I have." Under the old system the responsible minister would have brought the question before the Cabinet, and the Leader of the House would have acted on its decision.

In the same month the appointment of a Select Committee to deal with the problem of profiteering brought out from the Food Controller an official statement which was flatly contradicted the next day by the president of the Board of Trade. Last October, in his economy speech at Sheffield, the prime minister announced in a casual way that the bread subsidy would soon be discontinued. His colleagues, including the Food Minister, received their first intimation of this change of policy from reading the report of the speech in the newspapers. The Times of October 24 called attention to the fact that it was hardly possible to say who was responsible for the foreign policy of the country. The British representative on the Supreme Council in Paris had agreed to issue an invitation to Germany to cooperate with the Allies against Bolshevik Russia, while the Foreign Office remained for six days in ignorance of the step he had taken. There had been an acrimonious correspondence between the British and French prime ministers upon the Syrian question, in regard to which the Foreign Offices in London and Paris had been negotiating independently. Similarly, Mr. Montagu, the Secretary of State for India, officially advocated a scheme of Indian reform which had not received the sanction of the Cabinet.

Another startling innovation is the practice recently adopted by some ministers of contributing to the press articles in which they advocate certain policies in matters outside the scope of their own departments. Winston Churchill's discussion of British foreign policy in the Weekly Dispatch would have been treated as an unpardonable offense in a previous generation. Gladstone would have summarily dismissed any member of his Cabinet who made the newspaper press, instead of the Cabinet and Parliament, the channel for the expression of his views.

It is said that, at the end of the Cabinet meeting which agreed to propose a fixed duty on corn, Lord Melbourne put his back to the door, and said: "Now is it to lower the price of corn or isn't it? It does not much matter which we say, but, mind, we must all say the same." Any such idea of the necessity of unanimity in the utterances of cabinet ministers has lately become entirely obsolete. They seem to feel no need of being agreed even on what the government policy is, much less on what the effects of that policy are expected to be. Members of the same ministry are as independent of one another in the expression of their opinions as members of the same club or of the same debating society.

Under the old system, the Cabinet served as a supreme clearing-house of ideas on national policies. The heads of all the great departments were members of it, and at a Cabinet meeting each of them placed his views (or those of his department) before his colleagues and accepted the decision of the whole body. When everything was thus threshed out in common consultation, there resulted a common knowledge of the operation of the whole machinery of government. During the war the number of departments was greatly increased by the creation of new offices and on the plea, for which a good deal could be said, that the resultant body was too large to deal efficiently with the urgent problems of war-time conditions. Mr. Lloyd George substituted for it a small committee, called the War Cabinet, composed of men who were wholly free from departmental duties and could give their whole time and thought to the questions, especially of strategy, that seemed to be of first-rate importance. Ministers who were departmental chiefs were thus left out in the cold. Those of them who were on intimate terms with the prime minister could influence his decisions either by breakfasts at Downing Street or by aerial flights to Paris, while those who were not so fortunate had to approach him through the new Secretariat he set up—popularly called the "Kindergarten," partly because they occupied at first certain temporary buildings in the garden of the prime minister's residence, and partly because they consisted largely of those that remained of Lord Milner's "young men" in South Africa. Some of them preferred to gang their ain gait and to run their departments on their own devices, trusting that the prime minister's preoccupation with other matters would prevent them from being interfered with.

The result has been a state of confusion not far removed from anarchy. It has, indeed, been saved from anarchy only through the exercise of almost despotic powers by the prime minister himself, whenever the muddle led to a crisis which demanded decisive settlement. The Times does not exaggerate when it speaks of "the system of personal, almost presidential government which Mr. Lloyd George has evolved during the last two and a half years." He enjoys, it says, "all the advantages attaching to the offices of a British prime minister and of a president of the United States, while seeking to rid himself of the checks and balances with which each office is supposed to be surrounded." The experiment of a small inner Cabinet, relieved from departmental duties in order to devote themselves wholly to the conduct of the war, and since the armistice, to the major problems of reconstruction, has been a conspicuous failure. Each such problem has vitally affected one department, at least, and could not be settled without information which the department only could supply. Accordingly the ministers without portfolios have had to spend a great part of their time in going through masses of despatches and reports, and in getting up cases with which the departmental ministers were already familiar in the ordinary course of their work. In the long run there has been no saving of time or energy, and the business of the nation has suffered through having to be settled largely by persons who were not in direct touch with it. It meant ultimately the leaving of almost every important issue to be decided by the prime minister himself, and while he was in Paris for months at a time his principal deputy, Bonar Law, was on the wing between London and Paris every few days to learn what he was to say to the House of Commons. It has been government by Mr. Lloyd George.

At the end of October it was announced that the small inner Cabinet was to be dissolved and that a full Cabinet of twenty members was to be restored—a Cabinet numbering only three members less than Mr. Asquith's Coalition Cabinet, which Mr. Lloyd George contemptuously compared to a Sanhedrin. It is generally doubted whether the reality of this change will correspond to its outward appearance. The Westminster Gazette wisely suggests that it is for Parliament to see that the new Cabinet is a reality, as it can do by making it clear that it regards the twenty as collectively responsible for all the proceedings of the government. It says:

It should ascertain, whether they have the same privileges, including full access to all papers, on foreign as well as home affairs, as were enjoyed by pre-war cabinet ministers, and it should require that the old practice be restored of notifying the meetings of the Cabinet through the newspapers and stating which ministers attended. If these forms were observed, and if the twenty prove to possess an average degree of self-respect and self-assertiveness, we shall begin to get back to the old position in which a government was a government and a Cabinet a Cabinet.

## THE CABINET SECRETARIAT [1]

Change is the condition of a healthy political existence; but changes must be carefully watched in order that we may avoid reaction under the name of either progress or temporary convenience. We are glad to know that the House of Commons is to discuss next week the subject of the Cabinet Secretariat. For this institution more than any other recent innovation needs watching, not merely on the ground of economy, but in connexion with our whole Constitutional theory and practice.

Just because our Constitution is an unwritten conglomeration of customs, and not a formal document which leaped from the brain of some maker of Constitutions as Pallas Athene leaped all equipped from the brain of Zeus, we should be untrue to the spirit of it, and untrue to the genius of the British people for adaptation, if we condemned change merely because it was something new. Our Constitution has grown up, like our language. There has been no censoring authority making or refusing additions to the Constitution any more than there has been an academy magisterially accepting or rejecting additions to the language. In both cases new forms have fought their way into general acceptance because they served the common need. The need, however, must be proved. The proof must come from the people. It is not right for either the prime minister or the Cabinet to invent an entirely new instrument and to retain it without the sanction of Parliament. That is going contrary to all our traditions. The Secretariat deserves a particularly searching scrutiny before it is finally accepted lest it should be an obstacle in the way of normal democratic development. It may have been necessary during the war when the Cabinet was over-whelmed with work, but we have not heard sufficient reason for its continuance. Why was it not allowed to end with

[1] Spectator. 128 : 708. June 10, 1922.

the war, or at all events shortly afterwards? The apparent reason, though it is not a good one, is that Mr. Lloyd George, when he took the conduct of foreign policy practically into his own hands and ignored the Foreign Office and the Diplomatic Service, found the Secretariat a great convenience. Without it he would not have been able to hold that long series of conferences in various parts of Europe exactly in the dictatorial way in which he managed them.

But the time has now come for Parliament to consider whether the Secretariat shall be allowed to go on, and, if so, in what relation it shall stand to the Cabinet, to Parliament and to the nation. This problem is discussed with great ability and clearness in the June number of the Nineteenth Century by Sir Henry Craik. It is astonishing that Constitutionalists have paid so little attention to the Secretariat, but Sir Henry Craik has now given a very good lead and has pointed out the considerable dangers. He writes judicially, and by no means condemns the Secretariat because it is new; he asks rather for justification, and in his opinion and in ours, too, this will be very difficult to provide.

Up to 1640 the Privy Council was the Executive of the nation, and when the Cabinet emerged from the Privy Council it was merely as a Privy Council Committee of manageable size. We are reminded that the Cabinet is in origin only a distillation of the Privy Council by the fact that any minister who joins the Cabinet is made a Privy Councillor. It is characteristic of the jealous watchfulness with which changes in constitutional customs used to be regarded that at first the very name "Cabinet" was disliked. In a similar way, when the title "prime minister" gradually took the place of "first minister," there were many protests. Both titles have justified themselves, however, and nobody now would dream of displacing them. We repeat that all we are arguing for is that the proofs and justifications of experience should be the test, and not the fiat of a prime minister. When the Privy Council was the executive of the country its instructions were circulated and explained by secretaries. At first the secretaries were merely conduit pipes, but the task of explanation or assistance in carrying out the required work proved to be so onerous and responsible that the secretaries gradually developed into powerful officials, our present Secretaries of State. That was a natural and beneficial growth, but it was at

the same time a warning that in a country which has no written Constitution new offices may aggrandize themselves until they pass out of all recognition. They may develop mischievously as well as beneficially. It seems to Sir Henry Craik, and we agree with him, that the officials of the Secretariat have the opportunity of developing on lines that may do real harm to democracy.

The fact that the members of the Secretariat attend Cabinet meetings and take minutes of the proceedings is in itself a tremendous reversal of past practice. The Cabinet always used to regard its meetings as strictly secret. No written notes were taken. The idea was that by means of confidential discussion the best policy could be threshed out, because no member of the Cabinet would be formally committed. The responsibility of the Cabinet, moreover, was collective. The Cabinet spoke with one voice. If any cabinet minister disagreed strongly enough with the rest he could resign, and generally did resign. In recent years some cabinet ministers have tended to express in public their differences from the Cabinet without resigning. In our judgment this is a bad habit, and we hope that the coming debate in Parliament will do something to remind the country of the grand conception of cabinet unity which has been one of the principal sources of our political strength.

Sir Henry Craik asks several pertinent questions to which answers are urgently needed. If the Secretariat should continue, are the Cabinet minutes to be kept as a continuous record? If so, the most confidential matters of one government will apparently be at the disposal of the next government. Again, with the Secretariat present at Cabinet meetings, will not the tendency be to lose all the value of the old informal discussions and to substitute debates with ministers consciously making their points and sharpening their differences with a view to having the whole account put into writing? Yet again, is the *personnel* of the Secretariat to remain the same under successive administrations? If Sir Henry Craik's fears should be fulfilled, the Secretariat will grow into a powerful body obtruded between the Cabinet and Parliament. The chief officials of the Secretariat, who are already paid on the scale of the heads of departments, would certainly magnify their office. They could not take messages to the heads of departments with all the authority of the Cabinet, and particularly of the prime minister, at their backs, without a gradual accretion of personal authority that might have vast results. The danger is obvious.

## THE POWERS OF THE PRESIDENT [1]

It has been said that the President of the United States has more real power than most monarchs of Europe. I do not know that I am able to institute an intelligent comparison, because to do that one ought to be quite familiar with the extent of the royal or imperial power to be measured with that of our president; and I have not sufficient knowledge on the subject. I know something with respect to the real governing power of the King of England, and, except in an indirect way, the president's power far exceeds that of King George; and I think it is very considerably more than that of the President of France. When, however, one examines the imperial power in governments like Germany, Austria, Italy, and Spain, the question is much more difficult; and I presume no one would say that the president's power was equal to that of the Czar of Russia.

With us, a president is elected for four years, and nothing can get him out of office except his death, or his resignation—which never comes,—or his impeachment The certainty of his tenure for four years makes our executive administration a little more rigid and less subject to quick changes of public opinion than in the parliamentary countries. I am inclined to think that our system is a good thing for our country, however much parliamentary government may suit the countries where it is in use. Of course, it has this disadvantage. In a parliamentary government there is a union between the executive and the legislative branches, and they, therefore, work together, because those who constitute the executive lead and direct the legislation; whereas in the separation of the great branches of the government with us, the president represents the executive, Congress the legislative, and the courts the judicial branch; and the plan of the men who framed the Constitution was to preserve these branches separate. The president is able to recommend legislation to Congress, and he may go in person to argue the wisdom of it if he chooses. Mr. Wilson has restored an old custom of that sort, which was abandoned by President Jefferson, and I think he was right in doing so. It emphasizes his recommendations and focusses the eyes of the people on that which he regards as important to the public welfare, and it puts a greater responsibility on Congress to heed his suggestions.

[1] By William Howard Taft. Yale Review. 4 : 25-42. October, 1914.

## SHALL CABINET MEMBERS TALK IN CONGRESS [1]

Thomas Nelson Page, Ambassador to Italy during the Wilson Administration, however, opposes the plan on the ground that "such a radical change in government functioning might set a bad precedent for future generations." Says Mr. Page:

Before I was brought face to face with European systems of government, I had arrived at the view advanced for cabinet officers, like government ministers abroad, to have the privilege of the floor for expressing and advancing the measures which they desired to put thru. Having been brought into close observation of this method, I am convinced that it would, not only be a radical change in our own mode of government, but a most unhappy change.

Our government, while a complicated system, is based on independence and the theoretic equality of the legislative, executive and judicial elements, each of which has its constitutional powers and functions. To change this would be to lose the effect of tradition, which has itself a great power, and it would lead to confusion and might even lead to a complete change in our system.

[1] Literary Digest. 74 . 10. July 8, 1922.

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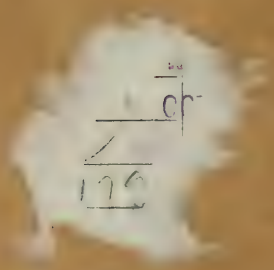

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